BEFORE THE FEDERAL TRADE COMMISSION

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

THURSDAY, MAY 20, 1999

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

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DAVID MATSON, HELEN-SCHALLENBERG-TILLHOF, Sprint

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(Appearances continued.)

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

RICHARD BARTEL, Communications Venture Services

LINDA YOHE, MARK FARRELL, SBC Communications

SUSAN GRANT, National Consumers League

CHARULATA B. PAGAR, JOHN AWERDICK, Promotion Marketing Association

P R O C E E D I N G S

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MS. HARRINGTON: Good morning, and either welcome back or welcome to the Federal Trade Commission. This is the public workshop portion of the Commission's rulemaking activity concerning its Pay-Per-Call Rule.

My name is Eileen Harrington, and I'm the associate director of the division of marketing practices here at the FTC, and I will be moderating the workshop for the next couple of days.

We have some procedural and informational business to take care of, so let's do that, and then we'll get right to our agenda.

First of all, let me tell you about locations of food, drinks and bathrooms. The rest rooms are outside the door to the left. The men's room is immediately to the left. The women's rest room is through the elevator bank and to the left.

Food and drinks are available on the 7th floor. Just take these elevators out here and find your way to The Top of the Trade. You can't mess it. Today's special for lunch is a taco salad. Mr. Ming, who runs The Top of the Trade, is kind of the mayor of FTC-ville here, and he wanted to make sure I told you that today

he's having a very good taco salad. Good buy he said.

We also have a handout outside that identifies some of the area restaurants where you might be able to get served and get back here within the hour that we've given you for lunch.

We have a message board outside in the lobby of this room. Please use it and check it for your phone messages and for other messages that you may need to leave.

Now, let's talk a little bit about the workshop. The first rule is don't reiterate your written comment. That's not why you're here. The purpose of this workshop is to continue to build the record by discussing issues and questions that we have, the people who are working on this, from our review of the comments.

So we really would encourage you to stick to the agenda and the questions that are asked, and let's move the discussion along. If you take the floor to simply reiterate your comment, I might cut you off because we really are trying to build a record of dialogue here that moves this forward.

If there are issues that you commented on that aren't on the agenda, that means that we've taken a look at the record, and we don't have any additional

questions about those issues right now. It doesn't mean they're not important issues. It doesn't mean that your comments are not being considered very carefully. It means that we decided that we don't need more exchange right now on those issues.

This also is not the forum to make arguments about the Federal Trade Commission's jurisdiction. There are important arguments perhaps to be made, but those are legal issues that are made extensively on paper, and we don't intend to go over that ground here.

I want to say about the excellent comments that have been submitted, that we really have read them very carefully, and we hear you. I think we understand all of the commenters' points of view. You made your points of view and concerns known loudly and clearly to us, so we don't need you to discuss those further here.

For example, the requirement that a directory service be tariffed to be exempt from the rule, the requirement that pay-per-call services be billed in fractions of minutes, we have read your comments very carefully on that, and we don't need to go over that ground here.

Let me talk for a minute about public participation in the workshop. During one of the breaks, please submit your name and the topic of your

question, and we will call on you during the time of the program today that is allotted for public participation. If the questioner's statement relates to issues that are going to be dealt with on day 2, we would appreciate it if you will wait until then to raise that issue or point, unless you're not going to be here on day 2, and then, of course, if you want to say something for the record, you're more than welcome to do that.

Now, the procedure for being called on, for those of you who are new to this, is that you all have -- all the workshop participants at the table have name placards, and you have little post-its by your name placards. If you wish to be recognized, please put a post-it on your name placard, and also, if all of you could slant your name placards in a little bit so that I can see them, although we're going to have introductions in a minute, and I know most if not all of you, we want everyone to be able to spot everyone's name.

It is not necessarily the case that I will be calling on you in the order that your post-it goes up, although I will be jotting down names of people who want to be recognized, and I'll try to get to everyone, but to facilitate discussion, and that is really the purpose of this workshop, I may call on people out of sequence

because what we really want to ask you to do is to engage very thoughtfully in the questions that are on the table for discussion at any given point.

And we want you to challenge one another. Especially where we have conflicting or differing points of view that have been taken by stakeholders, it is most helpful to us and to the record for those of you who know a great deal about this to challenge one another's assumptions.

So that is all that I have to say by way of opening. How many of you sitting at the table have participated in one or two of the prior workshops in the pay-per-call area? How many veterans do we have? Do we have the prizes for those people now?

Well, it's good to see those of you who have been here before back, and welcome to the people who are at the table who have not previously participated.

Since there's so many of you who are new, I guess there's one more thing that I should say, and that is we will stay on schedule, so when the agenda says we start, we start. When the agenda says we break, we break, and that's the way it is.

We may be able to move more quickly through some of the topics and move on to the next one, but we will adhere rigidly to the times that are set on the agenda.

Does anyone have any questions before we go around and do some very brief introductions?

Okay. Now, one last instruction. I'm sorry, I can't see. Who is that? Well, Richard, one of the problems is that we've got to make you more visible.

MR. BARTEL: I just wanted to clarify that for the proceeding, that this is not a negotiated rulemaking procedure.

MS. HARRINGTON: This is not a negotiated rulemaking this is a public workshop discussion that is being held in lieu of a period for written rebuttal comment.

Now, the last instruction I have is probably the most important, and that is every time you speak, before you speak, would you please identify yourself and your

MR. ANGEL: You also want an opening statement?

MS. HARRINGTON: No. I just want you to -- we don't want opening statements. We just want introductions.

MR. ANGEL: My name is Albert Angel. I'm cofounder of the Billing Reform Task Force. I am general counsel for ICN and 900 Service Bureau, and I'm here to represent Service Bureau's Billing Entities and Information Providers operating primarily in the 900 service area.

MR. TANZI: Good morning. My name is Anthony Tanzi. I'm director of communications at Brown University at Providence, Rhode Island. I'm here today representing ACUTA, the Association for Telecommunications Professionals in Higher Education.

MR. GORDON: I'm Richard Gordon, chairman of Electronic Commercial Association. We represent approximately 4,500 members from large to small, many of whom use various types of telecommunications and telephone billing services, and as well as 900 providers.

MR. LAVALLA: Good morning. Despite what my name tag says, my name is Kris Lavalla from Bell Atlantic, and I'll change that, and I am the director of carrier services, billing and collections for Bell Atlantic.

MR. KRAMER: Jeff Kramer. I'm with AARP, Federal Affairs on the consumer team, and I look forward to hearing comments today, and I hope to bring to the table a purely consumer perspective, not technical and legal issues, but to talk more from a consumer's perspective.

MS. MITCHELL: Good morning. I'm Jacquelene Mitchell, and I'm president of Billing Concepts and president of CERB, Coalition to Ensure Responsibility Billing. I'm here today representing seven clearinghouses that provide services to interexchange carriers, service providers that do miscellaneous enhanced services such as paging, voice mail, et cetera.

MR. PASSAN: Good morning. I'm Gary Passan, and I'm president of Network Telephone Services. I'm here primarily representing the Teleservices Industry Association. The TSIA has been an activity participant in both the legislative and regulatory process surrounding audiotext since its very beginning, and we appreciate the opportunity to be here again today and participate again in the process.

MS. HAGAN: My name is Deborah Hagan. I'm an assistant Attorney General in the Illinois Attorney General's office. I'll share my spot here with assistant Attorney General Jill Sanford from the New York Attorney General's office, and we are representing the National Association of Attorneys General.

MR. BRENNAN: My name is Peter Brennan, and I'm a cofounder of the Billing Reform Task Force. I'm here today representing my company, the Tele-publishing Group from Boston, Massachusetts, and the interests of the 600 newspapers throughout the United States who do business with us, the 200 radio stations, our 300 employees and the 7 million U.S. consumers who use our 900 number services.

I'll be assisted by other services bureaus who have not been able to get a seat at the table, and so if you see people passing me notes, that's who they are.

MR. ADAMS: I'm Danny Adams. I'm not Phil Permut, although Phil and I will trade-off throughout the two-day workshop here. I'm with Kelley Drye & Warren, and we're here today on behalf of Cable & Wireless West Indies. Cable & Wireless West Indies is owned by Cable & Wireless PLC, a British corporation which has global telecommunications operations.

Cable & Wireless West Indies owns more than a dozen Caribbean telephone companies to provide local telephone service, some of which are used for international audiotext services. That's why we're here today.

MS. SIMPSON: Hello. My name is Adele Simpson. I'm currently employed by the VISL, an executive member of the International Telemedia Association. Today I'm here representing the International Telemedia Association, a trade association that regulates and represents the international telemedia business and whose membership comprises 85 percent of all international telemedia traffic.

Our membership includes international carriers, service providers and fraud specialists.

MS. GARCIA: Good morning. Loretta Garcia. I'm an attorney with Dow, Lohnes & Albertson, and today I'm representing Teltrust, Inc., a company that provides

support services for telecommunication carriers and other companies, and Teltrust advocates the independent third party verification as a measure of control.

MS. HARRINGTON: That microphone isn't working here. Would someone get someone on the FTC staff?

MR. MATSON: I'll speak loud enough. My name is David Matson. I represent Sprint Corporation and participating on behalf of both our local division as well as our long distance division.

MR. BARTEL: My name is Richard Bartel. I'm with Communications Venture Services, Inc. I'll be here trading off with David Lockwood on occasion. I'm a member of the North American Council for Speed Resolution Task Force, however not here in any official capacity there.

I represent our clients which are primarily people who have been assigned numbers in the 555 exchange, the new national exchange.

MS. YOHE: I'm Linda Yohe with SBC Communications, and I'm a product manager for billing and collection services for Southwestern Bell Telephone, Pacific Bell and Nevada Bell, and I also will be trading off spots with Mark Farrell, who is in the audience today.

MS. GRANT: Good morning. I'm Susan Grant, vice

president for public policy at the National Consumers League and director of its national fraud information center. Earlier this week the League celebrated its 100th birthday, so I represent a long tradition of consumer advocacy, and specifically here for the next couple of days, the interests of the consumers who contact our fraud center about telephone-billed abuse.

MS. PAGAR: Good morning. My name is Char Pagar. I'm an attorney with the law firm of Hall, Dickler in New York City. I'm here on behalf of the Promotion Marketing Association. The PMA is a leading nonprofit organization representing the interests of the promotions industry. It has over 700 members including Fortune 500 consumers products and services companies, advertising agencies and university professors who teach promotions as part of a standard business curriculum.

The PMA supports the positions of the Billing Reform Task Force and the Teleservices Industry Association in this proceeding.

MR. HILE: I'm Allen Hile, assistant director of marketing practices of the Federal Trade Commission.

MR. COHN: I'm Adam Cohn. I'm an attorney here at the Federal Trade Commission, division for marketing practices.

MS. SCHWANKE: Marianne Schwanke, an attorney

here at the division of marketing practices at the FTC.

MR. DANIELSON: Carole Danielson. I'm an investigator within the division of marketing practices.

MR. HERTZENDORF: I'm Mark Hertzendorf, and I'm an economist in the Bureau of Economics.

MS. MILLER: I'm Cindy Miller, Florida Public Service Commission. We're doing a rulemaking right now on cramming, and I have with me Rick Moses and Diana Caldwell, and they're going to share this seat.

Our chairman, Joe Garcia, sees this as a crucial issue and wanted us to come here.

MS. HARRINGTON: I want to note that we're very

PINs as they are used in connection with the sale of audiotexts that's offered by means of toll-free numbers.

Now, we've divided this discussion into two sessions. The first session, and what we are going to focus on right now, concerns calling cards, debit cards -- I'm sorry. The first session concerns definitions of PINs and the formation of presubscription agreements. The second session which we may get to before the break or we may not will focus on calling cards, debit cards and prepaid cards, and we really would like to reserve discussion on the use of those mechanisms for that part of the discussion.

So what we're talking about here is the proposed rules definition of a PIN. Are the elements that we have proposed have appropriate? Should there be other requirements? Should there be a requirement regarding cancelation of a PIN or reporting a PIN as lost or stolen?

Should a PIN be unique to a particular vendor or audiotext service and who should bear responsibility for lost or stolen PINs? Should consumers bear unlimited liability for PINs?

All right. The subject is PINs, and the floor is open for discussion of these issues. Gary? Please

identify yourself and your affiliation.

MR. PASSAN: My name is Gary Passan, TSIA. We've probably provided a good piece of the comments on PINs. I think our perspective on PINs is founded primarily in just practical use. Many of the participants in the teleservices industry use PINs in a number of different ways, and some of the -- I think our comments present primarily a view of PINs that would allow for the customer to both create their own PIN and that the PIN could be sufficiently unique when looked at by the service bureau that it would allow them to define the presubscription agreement associated with that PIN.

The wording as we read it seemed like it's subject to some possible interpretations that would possibly keep us from being able to do that, so a good example would be for PINs is that -- I suspect most all of you have this, if you have an ATM card, you probably have a four digit PIN so therefore that bank -- of course that PIN is not unique to that consumer, that four digit PIN is not, but used in conjunction with something else which in this case would be your ATM number, it becomes a unique identifier.

So we're just proposing that the wording be expanded to cover that case so that we can use that particular philosophy in our development.

MS. HARRINGTON: Okay. Any follow up question to that from FTC staff?

MR. COHN: I do have a follow up question. Adam Cohn by the way for the record. In your comment you recommended that the rule be modified to allow oral disclosure of the PIN over the telephone.

How would an oral disclosure of a PIN prevent unauthorized access by people other than the subscriber to the line? If the PIN for instance is mailed to the billing address, I can understand that there's some protection against it being given to the wrong party, but what measures could TSIA propose to protect the distribution of PINs to the wrong party?

MR. PASSAN: I think that we looked at that very closely, and I think our perspective on the distribution of PIN really comes from two basic places. This is Gary Passan, again, sorry.

The first is that the PIN itself could and I think reasonable should be a negotiated number between a consumer and the vendor. To that degree I think the PIN needs to be established orally over the telephone to start with.

What we've proposed is that by creating an oral contract in that particular phone call through the concept of express authorization which is brought up by

the FTC later in their documentation that we would be -- we would be allowed to provide services, but that there's a risk that those services would fall squarely on the vendor.

So that when the consumer receives their written disclosures, if for any reason they don't agree with those disclosures or that those disclosures turn out to be associated with a fraudulent use of the product, that the service bureau or vendor would then forgive all charges associated with that specific transaction.

Therefore, no consumer would be responsible for a transaction until they had received their written disclosures.

MS. HARRINGTON: Okay. Debbie Hagan?

MS. HAGAN: I think that the problem from the position of the Attorneys General and the complaints that we've seen over time and in the past many times those were -- the consumer did choose the PIN through some kind of electronic method. There was no way to tell who was choosing that PIN and there was no way to know whether adequate disclosures had been given.

And I think based on our comments, we would prefer to see that the contract is not final orally over the phone, that it is not final until written disclosures are given and a PIN that is unactivated is

sent, and then a call would be made to the provider who would then activate the PIN.

We think in this kind of a situation, because we've had so many complaints and consumers continue from our anecdotal experience to think that 800 numbers are free, that you need special protections here, and you need a written contract with a PIN that's activated.

MS. HARRINGTON: All right. So Gary and the TSIA would recommend that the rule impose liability on the vendor for those situations where there is some discrepancy with regard to the PIN that's issued in that way. The Attorneys General would recommend that the contract not be formed until there's a written description delivered.

Is that a fair summary of the difference of views, would you say?

MS. HAGAN: I think -- Debbie Hagan from -- okay. Yes, contract formation would not be final until written disclosures.

MR. PASSAN: Gary Passan. I think our comments would be that if you follow up, we would propose, through the process of express authorization with a, and particularly as it relates to recorded express authorization, that that might be a sufficient disclosure, and we would have adequate documentation

that a reasonable oral contract was created at that time.

MS. HARRINGTON: Marianne, you had a question?

MS. SCHWANKE: Now a couple things come to mind.

MS. HARRINGTON: This is Marianne.

MS. SCHWANKE: I have a question that goes back to what you originally said about the PIN being unique, but based on what you said now, you said that if you had a recording, then you would be able to ensure that a contract was formed, but how would you ensure that the contract was formed with the right person?

Isn't that the issue here? With presubscription agreements and has been in many cases the subscriber who's liable for the charges has not been who's liable for the presubscription agreement being formed.

How would you ensure through your method that the contract was being formed with the contact person?

MR. PASSAN: I think our proposal is that should it not be formed with the correct person, that the liability would resolve to the vendor itself, not to the inappropriately billed consumer and thereby forgiving any possible charges that might have been accomplished.

Really in my mind and I think in the association's mind, I think it comes to if 90 X percent

of the people call and want to purchase services and have received a reasonable disclosure and are honest in their communication with the vendors, the vendors will have a high degree of that probability.

If the consumers are the ones that are acting in a fraudulent way by calling up and misrepresenting who they are, then we're willing to absorb those expenses, but we don't feel that we should be blocked from the opportunity to provide services to the consumers that are calling and are validly representing who they are to us.

MS. HARRINGTON: Okay. Loretta?

MS. GARCIA: I did not comment on this particular issue, but third-party verification used to confirm the express authorization could also be used to validate the PIN or to make a record, either a mutual recording --

MS. HARRINGTON: Loretta, could I interrupt for a second and ask you to identify yourself, please?

MS. GARCIA: Loretta Garcia, Teltrust, Inc., but what I was saying is third-party verification, if it were used to validate or confirm the consumers express authorization to allow a charge to be put on the telephone-billed, could also be used at that time to confirm the PIN and allow formation of the contract and

also to ask the question to confirm it was the correct person.

It doesn't guarantee in all instances that that would be the person that they say they are, but at least you would have some record either written or in Teltrust's case recorded that we could go back to later if there's a dispute.

MS. HARRINGTON: Thank you, Loretta. Susan?

MS. GRANT: I want to point out that the PIN in this context isn't exactly the same as PINs for, for instance, your ATM where you need it in order to access the service. It's about more than access. It's part of a presubscription agreement that takes the transaction out of many of the protections of the rule, and so I think that it needs to be approached very carefully.

The impression that I've always had of preexisting agreements is that they're designed for people that are going to be repeat long-term customers, so I think that there needs to be an orderly and progressive process for setting up such an agreement.

That's why we suggested in our comments that after a written memo of understanding, if you will, about the agreement that is sent to the consumer, that the consumer would call to obtain the PIN at that point and to verify their identity and the terms of the

agreement.

And from comments that some others have made so far this morning it seems as though that may be a practical solution to the problem of making sure that it is the person who's going to be billed who's actually got the PIN and is going to be using it.

MS. HARRINGTON: Thank you. A couple of reminders. Please identify yourself for the stenographer.

MS. GRANT: I'm sorry.

MS. HARRINGTON: That's okay, and when you've been called on, would you mind removing your post-it unless you want to be called on again.

MR. GORDON: Richard Gordon, chairman of the Electronic Commerce Association. In today's world, I certainly understand and appreciate the position that you've taken, Susan, but this is turning more and more and more and more into an electronic age, and how do you deal with things like go to your web site and enter your PIN or get your PIN so that you've got a document in

their telephone system.

I think that the position that's been taken by the TSIA is a forward looking one and one that should be seriously considered because the majority of the responsibility and liability has been accepted by the industry.

When that disclosure is given to the consumer a day or two or three or four after the event, if there's any challenge whatsoever at that point in time, it's just automatically waived. The charge is automatically waived, and I would suggest we would add to that disclosure notice a requirement that there be a toll-free number that someone could call printed right on that notice that says, If this call was not made by you, dial this number and have a dispute resolution right there.

Put it right in front of them, but the concept of having to wait -- this is a spontaneous industry, someone sees an ad or they see something and they want that service now. They don't want to wait a day or two or three or four.

I think we need to keep the context of what the injury is in balance with the consumer protections necessary.

MS. HARRINGTON: Okay. Cynthia? You're not

Cynthia. What have you done with Cynthia?

MR. MOSES: This is Rick Moses with the Florida Public Service Commission. We have a little bit different view on this since our jurisdiction only goes to the billing entities regulation over the unregulated charges. The use of a PIN number, we fully support, but what we think should happen is there should be a validation process, and we believe that validation process should be the local exchange company or the billing entity that is actually doing the billing.

If a cramming company, if they're going to be doing it unauthorized, is going to use a PIN system and give the consumer a PIN number, and they're just going to send the PIN information to that consumer, there's no validation process. There's nothing to run that against the billing entity to make sure that that is an authorized charge before it's billed.

MS. HARRINGTON: Would you like to be known as Anthony or Tony? Tony?

MR. TANZI: Tony Tanzi representing ACUTA. We support what this gentleman just said. There needs to be a validation process because although a student living in the dormitory will be authorized to use that PIN, the billing entity is the University, so without express authorization and some form of validation of the

ultimate responsible person, the University, for that bill, we become the stakeholder. We become the negotiator for the charge, and the student has stepped out of the process effectively.

MS. HARRINGTON: Okay. We're going to have in a moment some follow up questions from Marianne and Adam from the staff but before we do that, let's go to Peter and then Richard Bartel.

MR. BRENNAN: Peter Brennan with TPI Group. I just wanted to clarify that the presubscription agreement is a contract with the consumer, not necessarily the line subscriber as Adam seemed to indicate, and that's consistent with the practice of all kinds of telecommunication services, and I think it's been acknowledged that there could be many responsible adults living in a household but with typically one person is the typical consumer, so...

MS. HARRINGTON: Richard Bartel, please.

MR. BARTEL: Hello. I don't think it's --

MS. HARRINGTON: Would you identify yourself, please?

MR. BARTEL: Richard Bartel. I don't think it's quite necessary for the industry to give up all that much. Even though the subscriber denies liability there's still the oral contract involved with the

consumer as this gentleman just said, and I think there are ways that the industry can do authentication or verification.

There is technology where there can be digitized voice samples, where the person is asked to state their name and address, and that voice sample is saved with the PIN file so that the consumer if they dispute it later can identify that voice.

It could be played back to them and they'll say, Oh, that's so and so, and at that point it becomes a non subscriber charge and a normal receivable that can be enforced in other ways other than the through the phone bills and that could be done in the University situation.

MS. HARRINGTON: Marianne?

MS. SCHWANKE: Marianne Schwanke. Gary, earlier today in your comments, you suggested that a PIN not be required to be unique in itself but in combination with something else be unique.

What did you have in mind? And I think in your comment you suggested that it be in combination with perhaps the telephone number from which the call was being placed.

I have two questions, one is: Isn't that then basing the subscription -- the presubscription agreement

on ANI and number 2, doesn't that -- does that limit them the use of the PIN to the phone from which the presubscription agreement was originally made and then used from a different phone?

MR. PASSAN: A couple questions there.

MS. SCHWANKE: Yes.

MR. PASSAN: This is Gary Passan. I think the -- I guess I would like to kind of break this down in a couple pieces for us. One is the presumption I believe is that we're setting up a presubscription relationship which means it's on a toll-free number or a number thought to be toll-free by the consumers, and so therefore what we're trying to do I believe is develop a contract relationship with that consumer which means we need to collect certain information from them and who's going to actually be billed for the transaction.

That's the goal of the situation, and to provide to that person the material terms and conditions under which the relationship's going to be managed from this point going forward. From our perspective, what I think the issue we would like to see is that that number that's negotiated between the two parties should be as freely developed as it can be, not to create the situation in respect to the gentleman down here implying that that person would be billed on the ANI.

That's very clear that the presubscription relationship mandates that the consumer that set the relationship up is to be billed for that specific transaction. Now, in that case and in my mind there are really two cases, there's the case where the consumer is acting responsibility and is in fact setting up a contract with us because they really do want to do that, and then there's a fraudulent user that is trying to represent himself as somebody else.

The first case I think we all agree certainly instantaneous, being able to set that contract up and beginning to provide the services is a very good thing. I think the consumers would like that. We think that's good for the industry. We see that as obviously a benefit I think to everybody.

The case where we have a consumer that's fraudulently trying to represent himself as somebody else to get someone else to pay the bill I think is the question we're trying to get our hands on. To get to your question, the coupling of -- the creation of that number and using ANI as an option we set where if you came in, if you call from home, you may use your four digit PIN because we think telephone number and PIN together so we don't think that has anything to do with the ANI being billed.

It has nothing to do with a consumer who owns the ANI ever seeing the transaction. It just says that if a call comes from this number, we will allow you to report it. If you want to call, use a four digit PIN. If you want to call and use these services from some place other than your phone number, in that case they would clearly have to give us a longer PIN.

So what they're providing and what we've asked to be provided for is the PIN be unique to the individual so therefore it would be portable or that in conjunction with something else, maybe their checking account number and a PIN, mybdo ¶ce ce c

we're trying to talk about more is a fraudulent consumer trying to get on that service.

MS. HARRINGTON: Adam, did you have a question?

MR. COHN: Yes, I did. This is Adam Cohn. I have a question. Actually it's sort of a follow up to what you just said, and I've heard some other comments about PINs that are also relevant.

A lot of what's being said implies that we need more flexibility on distribution of PINs perhaps orally or by some other means, but at some point is there -- would you feel under your proposal that the PIN services any function at all meaning that if you can distribute a PIN orally or a consumer can ask for a PIN orally and they can receive the service and be billed for the service just by asking for a PIN orally over the phone, what's the difference between that and someone calling an 800 number and just being charged right away?

Is there any added security value to having a PIN that can be distributed orally over the phone and would you think that it might be possible to have consumers request unique identifiable PINs by mail perhaps the way that you do with an ATM card?

MS. HARRINGTON: That's a question for Gary, but if others want to respond, please do.

MR. PASSAN: I'll jump on in. I think our

proposal, if the proposal stopped at simply creating an oral contract, then I believe that while through the express authorization, I believe that it would still be a very valid approach to doing business, I don't think it would provide necessarily all the levels of consumer protection that the Commission's looking to get.

So our proposal included two additional elements to it. The second was that the terms and conditions would be then provided in written form to the address that was provided during the creation of the presubscription relationship, and so therefore those terms and conditions be mailed out.

And I think sort of addressing a little bit of another question down here is, and what happens if those terms are different than the -- if the written terms are different than the oral terms. I think our opinion would be that that would be sufficient cause for the consumer's original calls to be forgiven, and the industry is proposing in the spirit of providing the maximum protection that any calls, any transactions that are created in advance of the receipt of the written form would also be forgiven if upon receipt of the written form a consumer called the 800 number or contacted the customer service and said frankly, This is not our transaction, it wasn't created by myself and I

don't want that account to be valid.

The service bureau in that particular case or vendor I believe would have the responsibility then to cancel that transaction and to cancel that account subscription relationship because it's been clearly created by a fraudulent transaction, by a fraudulent consumer, and we're willing to accept those liabilities to get the benefits of being able to create forward going transactions because we're of the opinion that most of the people that call us are valid consumers and would like to do business with us.

The reason that they're calling is not to see who they can cheat but to see if they can receive services provided by you.

MS. HARRINGTON: Kris and then Richard Gordon and then Debbie Hagan.

MR. LAVALLA: Kris Lavalla from Bell Atlantic. I just wanted to respond to the gentleman from Florida. It sounded like you're suggesting that the local exchange company be the ultimate determinant if the PIN was valid, and we don't feel that the local exchange companies should be put in a position where we're trying to do PIN administration for literally thousands of vendors that might be out there, developing contracts that are either written or oral and to have that burden

fall to the local exchange company.

MS. HARRINGTON: Richard Gordon?

MR. GORDON: Richard Gordon, chairman of Electronic Commerce Association. Two things here. Number 1, again Adam suggested that this be subsequent to a mailing, and I want to impress on everyone the spontaneity of the industry and the need the industry has to be able to respond to consumers who want to buy something now.

Secondly, to take a look sort of at 40,000 feet, what's the difference between what the TSIA has suggested and the PIN model that we call credit card billing? There is absolutely no difference. It's a 16 digit PIN. You enter it. When you get your bill,

which in the past had been problematic, and in the past what they've been able to do is choose their own PIN through some kind of electronic choice.

And then they've been able to immediately access the service and many times are being billed for something that their initial impression was that it was free.

Now, I understand that there are some people that are not going to do this fraudulently, but there are some that do, so you're suggesting basically the same format which is you still choose your own PIN, and then you would receive written disclosures, and the remedy would be automatic credit if you dispute, and also the question would be, Are you calling for any kind of verification of the initial authorization?

Are you calling for -- we have to deal with this every day, and I'm curious as to how is this actually going to work and how is this going to make anything any better?

MS. HARRINGTON: Gary, would you answer that? This is very good. We like to have participants talk to each other. High marks for you two.

MR. PASSAN: That's why we're sitting next to each other. Gary Passan. I think there's a couple elements in our proposal that I think is different than

the way it's been said. I think we covered the flow fairly well.

I think in our proposal we're proposing that there be an express authorization, and I think in fact what has been problematic to the industry is there has been -- the companies that haven't been necessarily playing by the rules, I won't call them fraudulent companies out of respect for some other folks maybe, but haven't been playing fully by the rules.

They haven't really done I think a reasonable -- as detailed a job as these Commission documents would have us doing on a good forward basis in terms of disclosing terms and conditions, and an express authorization form actually recorded the customers understanding and accepting these conditions.

I think that raises the bar, essentially if your primary point is consumers have made these transactions and didn't realize they were doing it. Then I think that a recorded example of that happening essentially levels the playing field for both parties.

That assures that the consumer have made an informed decision, and it's also allowed for the industry knowing that the consumer has been adequately informed.

MS. HAGAN: And that works if you're doing it

right, and what we see again is there are misrepresentations in the oral disclosure, and the recording gets abused as a mechanism because it will say, Now we're going to go to the recording, can you tell just us your name and address and it's a confirmation of basic identification information, and as law enforce. We've been provided these tapes but these tapes just say, Yeah, I'm so and so.

It doesn't evidence any really understanding of the terms and conditions, so are you saying that you would agree to -- for instance, what has happened in a lot of the states with cramming is that by state law, you have to take another step, and you have to verify the authorization either through written confirmation or through third-party verification.

MR. PASSAN: I think our proposal would be actually -- a couple parts to it, but one is that the express authorization description that's provided in the Commission's document I think would require us to get a

written confirmation which the consumer would then have the opportunity to be forgiven of any service that was provided in advance of that if, when upon receiving the written confirmation, they don't believe that the terms and conditions are acceptable to them that they would understand.

And if they didn't understand it was a billable transaction, it would be forgiven immediately, and that's our proposal is that they would have that redress to simply say that, so the industry takes 100 percent of the risk, and the customers, it's zero percent of the risk.

And if we wouldn't do that frankly, if we didn't think most of the consumers that wanted to purchase the products are going to be valid consumers. If we thought most of the people who were going to be purchasing products would be invalid, we would not go there to address your second point.

There are probably parties out there that are doing fraudulent things. If that wasn't happening we wouldn't be here for the second or third or fourth try on trying to get these rules cleaned up.

I really think that we should -- I think the Commissions is empowered and also Attorney Generals are sufficiently empowered if this is being done that they

have the ability to deal with it. To set the bar for people that are doing it right so high that it impacts the economics and impacts the consumerism choices I think is raising the bar beyond what we should.

MS. HAGAN: I just want to say this is a special instance when you're advertising an 800 number and the net impression in the beginning is that it's free, and I think that it has to be treated differently in order to take away that impression for the consumer, and it has to be more carefully dealt with than the normal ordering of product.

That's been our experience practically.

MR. PASSAN: And I think we agree, and that's where express authorization raises the bar.

MS. HARRINGTON: Susan and then Rick and then Adam.

MS. GRANT: Susan Grant, National Consumers League. I think I should probably trade places and sit next to Richard because we'll probably have a lot of dialogue back and forth, and I do understand your concern about spontaneity, but to pick up on what Debbie said, we need to remember that the concern is that toll-free numbers are widely considered by consumers and quite rightfully as being free to call.

And that was why the presubscription arrangement

was very narrowly drawn on the first place and as it turned out not nearly drawn enough, and now we need to make sure that we close the loopholes and that people understand before they make the call that there's going to be a charge and how much it is.

I appreciate your suggesting that if there's a problem, the companies may be willing or may not be willing, depending on the company, to take the charges off the bill at that point, but I'm more interested in making sure the consumers know that they're being charged something and how much to begin with.

There's a couple of other ways to deal with the need to in some cases provide services spontaneously. One is by asking the consumer to give a credit card number because the consumer understands then that

the same PIN number to authorize any charges on their phone, it seems like there would be no further administration by the local exchange company to do the administration.

All they're doing is validating against the existing number they already have, and the other point is the gentleman that, Mr. Passan, mentioned that the companies, whenever they get a dispute, will take the charges off the bill. That may be true to the largest degree, but what we've also experienced in Florida is the company then turned the customer over to a collection agency, and then the customer's credit is ruined, so it doesn't happen all the time.

MS. HARRINGTON: Adam and Mark on the staff have questions, and we're going to do those, and then go to Linda, Richard and Peter.

MR. COHN: This is Adam Cohn from the FTC. Listening to what people are saying around the table, it does sort of mesh with some of the comments which some of the providers have suggested, what looks like more like a negative option, consumers who may have been wrongly billed for presubscription agreements where you get a mailing that would disclose that that purchase had been made in your name and you had canceled it somehow.

This leads me to ask two questions, and I would

like to hear from the consumer protection people and also from the people who would be providing the service.

What extent could be taken in such a negative option scenario to reduce the numbers and perhaps percentage of people who are billed wrongly in the first place? This might be able to help people who are billed wrongly and they have a negative option to cancel it, but what steps could be taken by the industry to reduce the reduce in the first place the wrongful billing?

MS. YOHE: Would you identify yourself, Linda?

MS. YOHE: Linda Yohe, SBC. It's with regard to the steps to reduce wrongful billing, and my question is back to Gary, it does sound like what you're proposing is a negative option, and it sounds -- it sounds very admirable that you're willing to take on the risk as a vendor as far as forgiving those transactions but I guess my question is: Until you get the written

Presubscription transactions traditionally and inherently have been non telephone-billed transactions which particularly somewhat addresses the issue of getting things off of the bill, but in fact it will never have gone to a telephone-billed precisely.

Would it make sense to withhold those transactions from a billing perspective and allow the written disclosure to flow forward to the consumer and give the consumer a reasonable period of time to respond to that and say, No, those aren't my transactions and shouldn't be billed?

I don't know that the industry would object to that except from a cash flow perspective. The reality is that for most of the consumers -- again we're talking about a small percentage of fraudulent consumers here. The bulk of the consumers are or good consumers, have entered this transaction willfully. They've been disclosed through express authorization all the terms and conditions, they've agreed to those terms and conditions. They've been provided that service and now expect to be billed.

So to withhold the transactions for the few smaller cases I think from a cash flow perspective isn't a good idea and from a business perspective isn't a good idea.

MS. HARRINGTON: Gary, I want to follow up on something that you said which is that these presubscription billed services are not traditionally ones that appear on the telephone bill. We here at the FTC, certainly many of the problems we have seen involved services, the charges for which do occur on the telephone bill.

What's your basis for saying the opposite?

MR. PASSAN: Probably because largely I would say that the companies that the TSIA represents haven't really been involved in that class of transactions, so I don't think we've been -- it's not something that we've seen a lot of.

MS. HARRINGTON: How do the companies that TSIA represent bill?

MR. PASSAN: Typically as it relates to presubscription, it's been directly from the consumer, where the addresses have been collected from the consumer. Directly the bills have been rendered to the consumers. The consumer has paid directly to the vendors.

MS. HARRINGTON: Now I'm going to ask a question of Debbie. If there's no telephone-billed billing, does that change at all the rather direct billing? Does that alter your thinking at all? And you may want to think

about it for a minute.

MS. HAGAN: Debbie Hagan. Part of the problem has been the method of billing. I wouldn't want to concede any of our proposed protections, but of course many consumers, due to the bill format which is now being improved, have seen charges thrown in with others, and they haven't noticed them, number 1 and number]]]µµµØØØ

doesn't acknowledge the receipt of this written notification, or is the consumer liable for any use once the notification is sent out?

How do you envision that scenario playing out and what steps could be taken to avoid being supplied to the consumer? Does the FTC perhaps have to regulate the format of this disclosure?

MS. HARRINGTON: Gary, would you answer that?

MR. PASSAN: Let me wait to answer part of you question and part of an answer to Adam's question. I believe obviously I think there should be clear conspicuous notice on whatever is provided in written format, and I think if a company didn't do that, I think it would have other issues with the FTC and trying to regulate the shape of the envelope or the color.

But I think it's probably trying to go too far. I think we have a responsibility to employ that

As it relates to direct bill, because of our experience, it seems to me it would be better to send the transaction along with the verification so that they have the opportunity to validate the transactions that came with the notice in terms of the condition are in fact ones they'll be responsible for.

And if they choose not to, then the company again has agreed -- the industry has agreed that it would accept the concept of forgiveness of all of those transactions I believe -- if the consumer simply said, I'm not willing to accept the written terms and conditions as provided within.

MS. HARRINGTON: I want to note that we probably wouldn't regulate the color of the envelope. That would be the FCC. I see my FCC colleagues in the back row. Just a joke. Richard Gordon, please.

MR. GORDON: A couple things. Number 1, Richard Gordon Electronic Commerce Association. We will have a lot of dialogue because I would more support your position on 900 if we had 900 billing guarantee. As I think we'll be discussing later in the day 900 billing is being effectively eliminated in many territories by some of the predatory behavior of the LECs.

What we're really talking about here is a situation where there is ball bearings and strawberries

in a blender. You're talking about telephone-billed and direct billed and they don't fit. They're not the same substance, and the TSIA's position on direct billed is exactly again I'll say the credit card model.

There's a document coming. It's telling you, You made this call. It may look a little bit like a phone bill, but it's not something that is getting into the state regulated systems of all of the telephone companies.

In that situation I think what we've presented here or what the TSIA has presented here is a very viable alternative because what they're saying is, We're going to send the bill, and I think the bill should go out immediately in this case because the sooner the person gets the document, the quicker they can react in the event it was something they didn't know what they were doing.

And in that situation I think the timeliness of the bill should be almost immediate. Secondarily, if you then follow that up with a disclosure that if you didn't do this or if you didn't understand you were doing this, not only will we not charge you for this, just call and eliminate the bill, but a certification that there would be no secondary collection on direct bill.

If the consumer says, I didn't do this, then there should not be a right to secondary collection, and I think the industry, from what I understand, would be prepared to accept and live with that.

When you're dealing with telephone-billed, if the industry is prepared to forestall billing until there is some verification, then I might suggest that the billing companies who are the ones that actually place the record in the system be possibly the third party that does some form of verification here.

And I understand the need for third-party verification. I don't particularly support it, but at the same point in time, if there's going to be a point of third-party verification, it should be part of the system.

The phone companies, the LECs, just don't have the ability to do that besides the fact there is last I checked 1,765 around the country, so try to focus it, try to get it into a smaller number of hands as possible.

MS. HARRINGTON: Peter? You've been waiting very patiently. Thank you.

MR. BRENNAN: Thank you. Peter Brennan of the TPI group. I would like to advocate that we keep in mind some basic assumptions that really go back to the

historical record of this entire proceeding. We assumed, and rightfully so as Susan's pointed out earlier and others, that toll-free numbers are free, and that's the basis upon which much of this was written.

Yes, toll-free numbers are free but there is a recognition that what you do on the toll-free number may not be. If I charge a sweater to my credit card to Land's End, I'm certainly not expecting the sweater to be free.

This is analogous to that situation. If we assume and we have built a great deal of regulation, and it seems to be working, that when people hear the preamble articulated that discusses the terms and conditions on a 900 number call, that that's understood and that that gives consumers a chance to make a decision.

So can we also assume in this case when terms and conditions are laid before consumers that they will have some understanding of those? Can we assume, Mark, to your point that consumers will read their mail? Some of these things are so basic to the conduct of business that I almost think that if we can't -- if we can't get to that point, why are we wasting our time.

And the other point I would like to make is that, Susan, relative to your comment about 900 billing,

900 billing is becoming less viable every day, and in part because of the situation that you described that we'll talk about later, but in part because a situation has been allowed to occur over time where it just is less viable because the integrity of the billing isn't there because the charge backs are so bad.

So a couple years ago, the last time we met, seemed to be a viable placing, and I think it should have been, but that's slipping through our fingers, so these other services are necessary as perhaps an alternative to a dying goose.

MS. HARRINGTON: Okay. Debbie, you had your post-it up and now it's down.

MS. HAGAN: Yes, the only point short sense you referenced the FCC is that they did in slamming have a packet that was required to be sent with a negative option kind of thing, and they have since eliminated it because we litigated it so many times and so did they.

MS. HARRINGTON: It wasn't effective.

MS. HAGAN: Just hidden among a lot of other things.

MS. HARRINGTON: Susan?

MS. GRANT: I was going to say that also I am sensitive about charge backs, and I would be concerned about creating another situation where companies would

end up having a lot of charge backs which I think your proposal might result in.

MS. HARRINGTON: Adam has one last question on this subject.

MR. COHN: On the negative option issue, Debbie, is there any way to make the negative option work better from a consumer protection perspective? Maybe not the color of the envelope necessarily, but some sort of limited requirement about not including additional materials or something like that? Would that help the negative option?

MS. HAGAN: In the telecom industry, what would happen is the welcome package would come with five or six pages of introduction to your service, and somewhere there was a small postcard that was this big (indicating) that said, If you don't want this, you have ten days to return this, so it was an issue of hiding the mandatory disclosures.

And consumers never thought they authorized the service, then got the verification that way, threw it away and thnd ýuld continue to be billed, so I guess it's the conspicuous issue.

MR. COHN: Do you know if it's doable in a way that would satisfy your concern?

MS. HAGAN: I just don't know. We found so much

abuse that the FCC recently in their amended rules eliminated it as a verification method.

MS. HARRINGTON: Richard Gordon, Gary, and then we're going to move on to the next topic in this section.

MR. GORDON: Two points. Number 1, again, Debbie, I think what you're dealing with is the direct bill issue. When you're dealing with a product billing, you're dealing with direct billing. You can't get mixed in with other things because it's telling you, You owe this money right then and there.

I understand and respect the problem with the CID where you have that document that day, and then three weeks later you get your phone bill. And you forget. You don't associate those two. This is not a disassociated transaction.

This is one transaction in which it said, You made the following purchase, you owe this money, and you pay me directly. With regard to Susan's comments about charge back, certainly charge backs in the 900 industry have been a major problem, and I think that the pay-per-call industry would be prepared to bear the risk of loss in dealing with these consumers under a direct billing situation for two reasons.

Number one, when they submit those records to a

900 carrier, they're charged whether or not they get paid, and in fact when they are not paid, they wind up paying extra for having the billing and having the charge back and all the handling fees.

Secondarily, in this situation they would be able to turn that billing off in a reasonable period of time. One of the big problems that the 900 providers have is it might be six months, nine months or a year before charge backs come back. I've seen situations of $10 or 12,000 coming back.

Well, if you're doing direct billing, you're not going to keep opening that gate and letting that consumer run up $10,000 bill before they make a payment. Once they do make a payment on a direct bill, that that is constructive acceptance of the contract.

I don't think you need an explicit and separate acceptance of the contract. If they pay that charge, then why isn't that an acceptance?

MS. HARRINGTON: Marianne has a follow up question.

MS. SCHWANKE: Getting back to something you just said in the beginning of your statement, that there's no disassociation between the charges and the disclosures. Well, if you receive something, a bill for something that you never purchased to begin with, you've

never had a transaction with a particular company, you get something in the mail that you don't recognize and you've never heard the name, isn't there some chance that you're just going to toss it out without looking at it so you never see the bill and disclosures, not

MR. HERTZENDORF: I'm just wondering -- Mark Hertzendorf. I'm wondering if someone could comment on the economics of direct billing versus billing on the telephone bill, and is there some -- do I hear that there's a consensus among some of the industry that there should be different standards then for direct billing versus telephone billing?

MS. HARRINGTON: Richard, that question is for you.

MR. GORDON: I believe that there is an economic model that works for direct billing for pay-per-call. Yet at the same point in time, there is not a model that works for direct billing into 4250 equivalent type things.

As an example, the average pay-per-call transaction is probably in the mid $20 range, whereas an inside wiring plan with Cleveland Bell or Cincinnati Bell is $1.01 or 1.07. You can't economically bill $1.07 a month, but you can certainly economically bill a $25 transaction, particularly one that is a good model that suggests that after the first transactions, there are repeat transactions.

So from that perspective I think that you're dealing again with strawberries and ball bearings.

MS. HARRINGTON: Gary? Okay, Peter, to Mark's

question?

MR. BRENNAN: Very quickly, I wanted to point out --

MS. HARRINGTON: This is Peter Brennan from TPI.

MR. BRENNAN: Peter Brennan from TPI, that the Billing Reform Task Force has engaged an economist to build a model to the answer to that question, and we would like to have the opportunity to submit that for the record.

MS. HARRINGTON: Absolutely. We would love for you to submit it. Thank you. Gary?

MR. PASSAN: I think Richard had some very good points here. I think the final point I would make is that the industry is very interested in obviously reducing cramming and reducing inappropriate billing of consumers.

We hope that through the actions like the FCC's Truth and Billing movements and the work of the FTC that companies that have abused those are being slowly weeded out and made non viable.

That of course is opening up the opportunity for good strong companies to build working relationships with their consumers to grow and prosper. We would be happy to work with the FTC in mitigating NAAG's concerns about negative options. Maybe there's some way of

making that packet positively acknowledged once it is received, because again we're betting on the fact that these are valid consumers that want to create these relationships and want to do business with us.

So if there's some hurdles we need to go through to assure everyone that that's valid and that that is a good relationship, we're happy to work with that as long as it doesn't create such an economic burden that it doesn't make sense to do business at all.

MS. HARRINGTON: Well, it sounds to me like there may be some grounds in this area for continued discussion, and I would certainly urge people around the table to continue the discussion outside of the rulemaking, and if you come up with some other idea, put it on the record with respect to all of these issues.

All right. Now, we're going to move on to the next sub topic in this presubscription agreement discussion, and that goes to the use of instruments that are not subject to the Fair Credit Billing Act and Truth-in-Lending such as debit cards and calling cards for the purpose of establishing presubscription agreement and billing for services attained thereunder.

Now, if we assume that the TDDRA -- I want you to go to handout A. We have developed some handouts to try to focus the discussion. There are extra copies of

the handouts outside of the room, but for the workshop participants you were sent this the other day.

Everybody set, handout A? If we assume TDDRA permitted the use of debit cards and calling cards to charge for audiotext that's offered over toll-free numbers and assume that the rule were modified accordingly, what, if any, additional consumer protections would be desirable?

Now, we have some suggestions in the comments. For example, TSIA suggests that audiotext purchases made with these cards should be made subject to rules and dispute resolution provisions, but if we consider that in many of these circumstances, the billing entity would be a bank or common carrier with no affiliation to the vendor, we're interested in some discussion on how that suggestion would work.

Let's open up the discussion focusing on the questions in handout A if we may, please. Richard Gordon?

MR. GORDON: Richard Gordon, Electronic Commerce Association. Unfortunately I think that the use of the phrase "debit card" here creates a tremendous problem for the industry and for the entire electronic commerce community.

There is virtually no way that you can tell the

difference between a credit card and a debit card in today's banking environment. In my commercial enterprise Credit Cards.Com processes in excess of a hundred thousand credit card transactions a day, and we have no way whatsoever to identify when we see a credit card versus when we see a debit card.

As case in point I happen to have with me today my personal Citibank VISA card which starts with a six digit number of 427138. The first six digits identifies what's called the bank identification number. That's the bank that issued this particular card.

I believe that VISA has provided information to the various government regulatory agencies that there is a method or an algorithm that can identify a debit card from a credit card.

Well, I contest that, completely contest that, to the point that about a year ago, I received this card in the mail which in no way says anything about it being a debit card. If you look at the first six numbers it's 427138. The next nine numbers are the unique account number. The 10th or 16th number, the last number, happens to be what you call a mode ten number.

I took this back to my Citibank branch and said, You made a mistake, my other card is not expired yet, I don't need this one. They could not find this card in

the credit card system.

After about 15 minutes of searching the bank manager said, That may be a debit card, and sure enough, when they went into the debit card network, they found that it was in fact a debit card.

Now, Citibank -- correction, VISA and MasterCard both have tried to proliferate the distribution of debit cards that look exactly like credit cards for their own economic benefit.

When I as a consumer use this card, which is a debit card, at a merchant, the merchant doesn't know it is a debit card, and he pays approximately 2.2 percent in discount fees. If he knew it was a debit card, he would pay ten cents, so there is absolutely no way to identify these as separate vehicles.

MS. HARRINGTON: Richard, that's a good point and a helpful point. We're going to -- if anyone wants

MS. HARRINGTON: You get high points for being so compliant.

MR. PASSAN: Thank you. The TSIA's suggestion as it relates to this is really the thought of providing a floor of consumer protection which would be the telecommunications dispute resolution as promulgated by the Commission.

We feel that that assures that anything that's accepted by the merchant that the consumer is at least provided that level of assurances. We also propose that to the extent a debit card or any other card carries a higher level of dispute resolution conditions, Reg Z, Reg E, as it relates to check, debit and so forth and so on, that the consumer would be provided not only with what would be associated with telecommunications but would be provided those dispute regulations and rules that are associated with that higher level.

So debit card, I think as Richard touched on, does have a higher level of dispute resolution than the telecommunications rule is really mandated -- it's really covered under Reg E, which is electronic check commerce transactions.

In fact, informally, not in a regulatory rule but under operating rule, VISA and MasterCard have in fact raised the bar for these debit cards to be

essentially the same level as credit cards so you have the same dispute methods. You have the same protection. You have the same limitations of loss, and the reason they've done that is, as Richard just touched on, was to provide that same level of comfort for the consumers so they would be as happy to receive these debit cards that they have as well as the services they received from VISA and MasterCard.

So what our proposal is, getting to this first question is, A, the consumers would be provided at least the level of protection that is provided underneath the 308, to the extent there's a higher level, that they would get those higher levels, and that the industry would not take cards that didn't provide at least that level of protection and services for the consumers themselves.

MS. HARRINGTON: Susan?

MS. GRANT: The concern I have -- first of all. VISA and MasterCard's decisions to at least at this point treat those disputes the same is purely voluntarily and could change any time and might change if in fact it became enough of an issue with consumers demanding money back, which brings me to the second point.

And that is that the big difference here is that

the money's already gone from your account, and now you're arguing about trying to get the money back rather than being in the better position of disputing charges that you haven't yet paid, and because of the experience that consumers have and the difficulty that they have resolving disputes with the vendors or their representatives, I'm not confident of their ability to get that money back.

So I don't think it really would provide them with the same level of protection.

MS. HARRINGTON: A question from Adam.

MR. COHN: This is Adam Cohn. I wanted to follow up on the question or the point that Susan Grant just made which is -- I guess it's a question for the TSIA.

How would a consumer have a dispute resolution procedure set forth in the Commission's rule if they charged a service to a debit card? If a debit card company, a bank, received a charge, they would be implementing the regulations that always apply to them, but how would they know -- who would give the consumers these additional protections and how would that work?

That's my major question, how does it work?

MR. PASSAN: The most fundamental element of it was -- it's a two part proposal. If there is no dispute

resolution rules, then it would fall to the telecommunications rules. If there was a higher proposal, second part was if there's a higher level of dispute resolution, those would be used in lieu of the telecommunication rules.

At this point I agree with Susan that there's no absolutely regulatory requirement for it. At this point both VISA and MasterCard have implemented dispute resolution rules which are well in excess of the telecommunication rules. In fact they're modeled almost exactly after Reg Z.

So I guess as long as they continued that, then I think our industry's opinion is that the consumers have the redress and has the opportunity.

MR. COHN: What if they do not continue it?

MR. PASSAN: If they don't continue it, we'll have to come back to the table and develop another method of doing business. As Richard very well articulated, we have no ability to distinguish it directly ourselves between those two.

MS. HARRINGTON: Richard Gordon?

MR. GORDON: Again I have to say, I appreciate the position you're taking, Susan, and certainly your comments, Adam, but this is an impracticality. There's no way to know, so people here could be held responsible

for taking debit cards and violating the rules when they're the last ones to know that it's a debit card.

If the consumer -- I mean, I think I'm an informed consumer in the credit card rule. I couldn't tell the difference.

MS. HARRINGTON: Okay. I want to move on to the

I think that there's no way legally that I can see that you can buy in banks, the Commission in your authority. I don't see how you're going to have jurisdiction to require these third-party lenders to comply with your dispute resolution mechanisms.

I don't know. They'll have to explain to me if they think they have that authority. So I think we would be very concerned about that.

MS. HARRINGTON: Richard Bartel?

MR. BARTEL: Yes. I think that there is a need to distinguish between transactions where the money has already gone and the consumer doesn't have access to the funds and those situations in which you have a contract situation where you have a bill and a receivable or payable from a consumer's point of view.

And on this question I know we're getting to the question, but there is a method apparently of distinguishing 13 I think debit card versus a credit card and somehow they make that distinction.

MS. HARRINGTON: We're going to come to that issue in a moment. Gary, last word on this?

MR. PASSAN: I wanted to comment on Allen's question.

MS. HARRINGTON: Good.

MR. PASSAN: Which was bringing calling cards

into the equation, and. We focused a lot on debit card I think because of the challenges associated with it. Calling card we see as again something that was allowed for in the 1996 Act, and what we were hoping for is that under the spirit of what the FTC is to do, which is to promulgate rules that are substantially similar, that we'll develop a set of substantially similar dispute rules as it relates to debit cards, calling cards and so forth and so on.

question, which is: What if prior to submitting charges to a calling card, debit card or similar device the vendor were required to deliver a written confirmation of the transaction similar to the one specified by the Commission's telemarketing sales rule to the address to which the billing statements will be sent?

Assuming that this is a desirable requirement, that's an assumption for the purposes of discussion here, what information would that kind of an agreement include? Any discussion on this point? You're not a discussant, Adam.

Tony, did you want to discuss this?

MR. TANZI: I apologize. I'm sorry.

MS. HARRINGTON: Richard, did you want to discuss this?

MR. BARTEL: I'll just repeat what I said before. I think there has to be a distinction made between any transaction in which the money is already not available to the consumer versus a situation where there's a contract to pay the money in the future.

MS. HAGAN: Debbie Hagan. We just don't want to see it happen, so I don't really want to discuss another option.

MS. HARRINGTON: That's useful to know. We're looking, and I'm taking the deafening silence as some

indication of lack of interest in this option, discussants. Peter?

MR. BRENNAN: Peter Brennan, I'm sorry. In a calling card situation, it's typically not the case in terms of a piece of mail that would go out later, typically not the case that a vendor would have the name and address to send notice. I know we'll be having discussion later about the need for vendors to be provided with BNA.

MS. HARRINGTON: Adam?

MR. COHN: This is a question for people who are interested in the negative option discussion that we had earlier. This sounds similar to that. Would a negative option type approach be something that would be workable for a debit card or calling card scenario, and if a negative option isn't workable, maybe this is some way to get at what TSIA has suggested, which is an alternative method of dispute resolution for people who use these cards.

MS. HARRINGTON: Albe?

MR. ANGEL: Albert Angel, Billing Reform Task Force. I would like to perhaps explain why you might be hearing a little bit of a deafening silence on this issue.

I think it results from the fact that by and

large the expert participants here are not familiar with what you've proposed in the context of the telemarketing sales rule, and the service bureaus operating the 900 area want to remain capable of offering billing alternatives such as check debit to their customers particularly in those instances where 900 billing is no longer offered.

But the exact particulars of what it is that's been proposed there has never really been enumerated in the context of the rulemaking. This handout was issued two days ago, and I would think -- speaking for myself I'm unfamiliar with what is being proposed.

MS. HARRINGTON: That's a very fair point. Thank you. Gary, did you -- is your post-it up?

Well, the remaining question here is: What cards should be permitted and why, that is permitted for billing in the presubscription arrangement or situation?

Would anyone like to add anything on that question? If not, Richard Bartel?

MR. BARTEL: I don't know if this is the case, but I think that people are assuming that what a calling card is is a billing mechanism that is engaged in by a carrier, whether it be an interexchange carrier or a local exchange carrier. If it's not that, then I don't

see the distinction between a calling card and any other direct, but it would be a piece of paper in the mail or a billing aggregator so I'm assuming that there are some protections with respect to carriers that exist that may mitigate any concern.

MS. HARRINGTON: Post-it. Debbie?

MS. HAGAN: Debbie Hagan. The only trouble with that that we've seen in calling card cases which we've litigated is a provider providers the calling card and contracts with an underlying carrier for the transaction, so you might not necessarily have the benefit of a carrier or the billing process of a carrier.

So calling cards don't necessarily all work that way.

MS. HARRINGTON: Adam, a question?

MR. COHN: Earlier Tony made a comment and the comment that Debbie just made now regarding calling cards, the calling cards are issued by reference to ANI. I know we've seen cases in the past with instant calling cards. Does anyone have questions or comments or suggestions about dealing with the problem of instant calling card or distribution calling cards by the provider who is providing underlying audiotext services?

MS. HARRINGTON: Gary, answer?

MR. PASSAN: I think in sort of -- sort of coming back to the initial reiteration of our concept here, I think we do need to distinguish between calling cards that are generated by MCI and a calling card that's generated by someone else, and --

MS. HARRINGTON: Someone who has not been heard of before for example?

MR. PASSAN: Maybe has never been heard of or maybe in the wrong way, but I think our proposal is that this really closes a hole rather than opens one, and what it really says is that to the extent there is a validatable, contractual relationship between a consumer and say MCI, and MCI is prepared to allow audiotext transaction to be billed on the calling card, it should be allowed as long as there is a minimum floor of dispute resolution rules consistent with 308.

To the extent that MCI chooses to offer a higher level of standards, then we think the consumer should be allowed to receive that. I think that closes a hole because what it does is it says that should XYZ company create their own instant calling card, which I think is the concern, that they would then have to not be held to the rule and if they're not meeting these rules, they would have to provide at least the telecommunications 308 rule -- dispute rules.

They could carry it to a higher level if it was a good business thing to do.

MS. HARRINGTON: Okay. It's time for our break. We're going to do two things as soon as we resume. First, Marianne has a follow up question which she would like to ask on that point so everyone keep what Gary said in mind.

Second, I think that we have fairly well exhausted the questions that are on both the handout and the agenda here, but what I would liked to know is whether any of you want to say anything else on the presubscription agreement issue before we move on to billing notices of rights and obligations, which is the noon topic.

It would be a good thing if we could move along ahead of schedule. I don't want to discourage that, but I want to make sure that people who have something to say on presubscription agreement who are at the table get a chance to add whatever else they wish to add.

Now, I've cut us three minutes into our break time, so we will resume at 10:50, and I want to commend everyone for doing such a good job at discussing and questioning. Thank you.

(A brief recess was taken.)

MS. HARRINGTON: We have a couple of wrap up

comments, clarifying comments, questions, on the presubscription agreement issue, and then we're going to move right along, so first David Matson had a comment that he wanted to make for the record.

MR. MATSON: Yes, David Matson.

MS. HARRINGTON: David, could you use a microphone, please?

MR. MATSON: Sure. I'll just try to speak louder.

MS. HARRINGTON: Someone said it's wireless so it's inferior, is that it? David Matson from Sprint will --

MR. MATSON: I did want to make one comment with respect to some statements made earlier from the Florida Public Commission. They had indicated that the local telephone companies have PIN databases that we could use for third-party billing.

At least with respect to Sprint Local and particularly in Florida, we do not have a PIN database that we could use for third-party. What we do is have specific customer codes that we really don't share with third parties, and really without that information, third parties would really have no opportunity to use that as an identifying PIN.

So I just wanted to clarify that one point.

Thanks.

MS. HARRINGTON: Thank you, David. Mark Hertzendorf, had you one last question here.

MR. HERTZENDORF: We didn't really have much discussion about who should be allowed to establish a presubscription agreement, excuse me. I imagine that most of the consumer groups would believe that only the line subscriber should be allowed to establish a presubscription agreement, while many of the industry will probably think that any adult in the household should be allowed to establish a presubscription agreement.

Are there any deviations from this assumption, and does anyone want to add anything to their written comments on this topic? Peter briefly touched on this earlier I think.

MS. HARRINGTON: Anything in response to Mark's question? Richard Bartel? Susan, I can't tell whether you are responding to Mark.

MS. GRANT: Yes.

MS. HARRINGTON: We'll have Richard and then Mark -- I'm sorry, Richard and then Susan.

MR. BARTEL: I don't know -- yes, it's working. I don't think there was any presumption that presubscription agreement only applied to a telephone

subscriber. I never have seen such a presumption although presubscription agreement is required for certain types of bills to be put on a telephone bill, but the concept of presubscription agreement is an issue in contract and should be available to affinity groups like the AARP.

Their members could have a presubscription agreement as part of their membership where there's explicitly agreement of some sort, where they could be billed separately but because I note from the FCC's point of view, presubscription agreement relates to whether or not pay-per-call can be interstate or intrastate.

I don't think there's such thing as interstate pay-per-call outside of the 900 area code unless you have a presubscription agreement.

MS. HARRINGTON: Susan Grant?

MS. GRANT: I actually don't have anything to add to that.

MS. HARRINGTON: Tony?

MR. TANZI: Just a quick follow up to make sure for the record that regarding the calling card, we want to make sure that the intent is that the telephone number -- the telephone number is not a billing mechanism for the calling card or the presubscription.

We asked for a written -- we asked for a written subscription.

This would avoid the confusion of the user thinking that in good faith they're giving a telephone number, and they intend to pay the bill, and the actual

information, and the terms of the presubscription arrangement have already been worked out in the contract for long distance services.

They may want to offer a special dialing capability and charge a slight premium for doing so. In that context, anyone who uses the phone in the household creates a charge that is properly collectible by the interexchange carrier.

There would be slight variations of that for information providers operating under the same scheme, so I think the local exchange carriers in addition are concerned that making it specific to the individual ignores whole areas of contract law that confirm that the person who has responsibility for the household and is the billed party takes responsibility for everyone in that household who's using the phone.

MS. HARRINGTON: Marianne had a follow up question.

MS. SCHWANKE: Marianne Schwanke for the FTC. This, Gary, goes back to your suggestion that certain kinds of credit cards, calling cards and other payment mechanisms be permitted as a basis for presubscription agreement if certain dispute resolution requirements are required.

Then do you envision kind of a dual set of

regulations for -- I mean, under the current proposal and under the current pool, if you form a valid presubscription agreement, it takes you out of the rule, and therefore there are no dispute resolution of rule captions.

the rules so at least it's a consistent set of rules and offering that if there's a higher standard which is what VISA and MasterCard are doing as it relates specifically to debit card, that the consumer would benefit from the higher standard.

So I think we think it's still consistent with what you guys have on the table and the authorstanc

situation.

What if in the prepaid situation or calling card situation there weren't such other law providing dispute resolution or VISA or MasterCard, regulation C? I guess I'm still very confused about how your proposal would work. If someone placed a call with a calling card, had a charge on their calling card that they wanted to dispute, who would they contact to dispute that? That's the concept I am wondering about.

MR. PASSAN: Let me try another way around that then. The concept is that these are third-party billing methodologies that are different than VISA MasterCard obviously as you noticed, and they're different than 900 numbers or a presub relationship which is a relationship specifically with a vendor or service bureau.

Those relationships I think we all understand how they kind of work because there's realms where they can implement the rules. What I think our proposal is that to the extent that as an industry we're able to contract with a provider of a calling card, take MCI, and MCI says, We will provide at least this set of dispute resolution rules or in fact we have a higher standard, here's our standard industry, and we're able to be sufficiently comfortable that that's met, then we would have the ability under the rules to take those

cards.

If we would not be able to take cards that did not meet those rules, then I think we would be not in compliance with the rules, so I think what we're saying to the extent the opportunity is out there, let us utilize it. To the extent it's not out there, then we simply won't be able to use it.

MR. COHN: Is that something -- the rule currently says the card has to be subject to these dispute resolution rights -- the current proposal says that the card has to be subject to the Truth-in-Lending Fair Credit Billing Act. Are you suggesting that if it said something like subject to or the card operator voluntarily complies with Fair Credit Billing Act and Truth-in-Lending for purposes of these charges, is that what you're getting at?

MR. PASSAN: I would probably take the half, the other half of that side which is that -- take a calling card as an example or a debit card, that the industry would accept the debit card if there is in place a dispute resolution method which is at least as good as the telecommunications or better, and that -- and that if it does not, we would not take those specific billing methodologies.

MS. HARRINGTON: Okay. James Bolin?

MR. BOLIN: Jim Bolin, AT&T. I would like to address Mr. Tanzi's comments in particular and the issue of who it is that needs to enter into a presubscription agreement to obtain a PIN. I would like to express that graduators like colleges and hotels are special cases. They have unique problems. To make general rules based on that special case could lead to a lot of inconvenient situations for consumers.

For example in my household the telephone bill happens to be in my name. My wife is also listed under the listing. She has a different last name than I do, but the telephone bill comes in my name and I am legally responsible for it.

The Commission's adopted or proposed to adopt a very broad definition of telephone-billed purchase. That means for instance that if we do reach what we're hoping for in the industry in which cable television, telephone, Internet, wireless are all billed on the same bill, for instance, if my wife wanted to order a pay-per-view movie through a cable operator, she potentially couldn't do it because she's not me and her name is not on the bill.

There are adult members of households who want to be able to contract for services and should be able to contract for services, so the rule needs to be

flexible enough to allow that to continue to happen.

In the same vein, I would also like to remind the Commission, although it may seem unfair at times, the law is that if you have a house guest in your home for the weekend who has to make six hours worth of calls to an international institution, I'm not talking about pay-per-call, you're responsible for those long distance bills.

If you are an individual living in an apartment with several other adults and you make a lot of calls and skip town, if your name is on the bill you're responsible by tariff, by virtue of federal law, for those long distance charges.

And again while aggregators are a special case and those cases need to be taken account of I don't think we want to make rules that prevent the ability of adults to enter into contracts or that are treating pay-per-call services and other telephone-billed purchases which are entirely out of sync with the telecommunications charges.

MS. HARRINGTON: Albert and then Richard.

MR. ANGEL: Albert Angel, Billing Reform Task Force. Mr. Bolin articulated precisely my point. The Billing Reform Task Force is completely in agreement with that point.

MS. HARRINGTON: Tony? I'm sorry, Richard, I'm going to get to you, but we have a little bit of discussion going on down here.

MR. TANZI: I don't disagree with what James has said. The question is, Who is responsible for the bill. That's the question. In the case of colleges and Universities and large businesses, the user usually is not responsible for the bill.

The billing entity which is the University is responsible for the bill and therein lies the problem. The student who in good faith thinks he or she is signing up for a service that is contracted directly to them, we end up receiving the bill rather than the person if ANI or a billing number is used for that good or service.

That's the only caution that we're bringing to the table with calling card use.

MS. HARRINGTON: Albert, and then I promise Richard, you'll be the next one.

MR. ANGEL: Albert Angel, Billing Reform Task Force. The point that Tony makes is exactly right, but the party that's in the best position to correct that dynamic is the University through very clear technological and contractual solutions with the dorm room students.

Now, that's not to say there aren't scam artists that take advantage using somewhat like presubscription agreements, but to invert the preponderance of households where there's family using a phone and wanting to get into all sorts of services that can be anticipated in the future in greater numbers like cable service, like Internet access, like voice mail or enhanced services, it would set us all back.

So there really has to be responsibility at the household levels, and then the University's going to take responsibility individually for policing and enforcing contractual terms, vis-a-vis dorm students.

MS. HARRINGTON: Richard Bartel.

MR. BARTEL: Yes, I would like to repeat the previous comment that I don't think there's any presumption that's been raised anywhere that a presubscription agreement necessarily means that the liable party is the telephone subscriber from which the call came from.

I think contracts can be made between those parties that are capable of making contracts where there's a problem, here is this calling card issue and the debit issues and that is where the money has already gone.

The subscriber, consumer, the money is already

gone, and then there's no dispute resolution process in place outside of the dispute resolution process context. The word calling card to most people means that I'm paying for a call, and most people believe that a call means transporting, so if a calling card is used, it probably should be called something else other than just a calling card, maybe some sort of pay-per-call debit card or something along that line, because prepaid calling cards and in fact interexchange carriers have not gotten -- and then you have LECs getting into the information service probably February of next year.

That's when their five year prohibition expires, so I think this issue of presubscription is not a presumption that it is the telephone subscriber who's liable, and maybe there should be a regulation explicitly saying that that presumption does not exist.

MS. HARRINGTON: Okay. Adam has a question.

MR. COHN: Adam Cohn. I had a question for AT&T. You mentioned earlier that perhaps it isn't right to restrict presubscription agreements to the person who is the subscriber, but if a presubscription agreement is a contract, how can it be justified to bill the subscriber to the line based on the contract made with the person who is perhaps someone living in the household or --

MS. HARRINGTON: Lack privity.

MR. COHN: It goes against the basic principles

federal law under tariffs filed for interchange transport, you are obligated to pay for those services.

And I think that we risk setting up a real disconnect when anything that is on a telephone-billed purchase is not expressly exempted as a telecommunications service is unavoidable in that fashion.

I think people generally understand that they're responsible for usages in the home. I think reasonable limits need to be placed on that, but I question whether the public really wants a system in which consenting adults living in the same household can't use a telephone to make purchases, to order audiotext services unless they happen to be the name on the bill.

MS. HARRINGTON: Okay. We're going to have Gary and then a question from Marianne.

MR. PASSAN: Similar to Adam's point additionally. I think also it's the industry association opinion that presubscription agreement arrangements may be provided to anybody, and it may have nothing to do with the line provider.

A good example would be a presubscription with a college student, as we were talking about at a break where they were billed directly for services they purchased where the college has no involvement other

than the person who owned the telephone that the college student picked up and made the technical call with.

So we clearly see the distinction between who gets billed associated with the line subscriber and whether or not the subscription is attached to the ANI and whether or not the subscription is attached to some other billing mechanism.

MS. HARRINGTON: Marianne?

MS. SCHWANKE: Marianne Schwanke. I wanted to ask anybody, but I think AT&T suggested in its comment that presubscription agreements may bring in to its umbrella the services that weren't maybe initially intended to be brought into that.

We sort of focused on audiotext services, but are there other kind of services access to which would be provided via 800 number in which charges associated that would be brought under this theme that either are not currently being offered or might be sooner or later that we haven't focused on?

MR. BOLIN: Jim Bolin, AT&T. I think there are a world of services that could be touched on.

MS. HARRINGTON: By presubscription agreement, we're talking about --

MR. BOLIN: Under the current rule.

MS. SCHWANKE: Just that are being offered, that

the charging mechanism is that you call the 800 number and receive a charge for whatever?

MR. BOLIN: A charge to a telephone bill.

MS. HARRINGTON: Presubscription agreement isn't limited as Gary has pointed out repeatedly only to charges that appear to items purchased for charges that appear on your telephone number.

MR. BOLIN: For presubscription, for 800 calling? I'm trying to get clear on what's being asked.

MS. SCHWANKE: Well, really what I'm asking is not about the requirements but about the types of products and services that might be offered and the mechanism for purchasing them is you call an 800 number, and the result is you get a charge either to your telephone bill or some other mechanism.

MR. BOLIN: That's what I'm trying to clarify. Are we talking charges to telephone bills or charges --

MS. SCHWANKE: Why don't we focus on telephone bills. Probably the most common example today is internet access. AOL got in trouble -- I think now most Internet access providers are complying with an 800 number. They're charging a fee for that, and they have to enter into a written presubscription agreement of some kind.

There are services I'm not sure on the market or in development but I'm aware of services that would allow things like dialing an 800 number that could access your E mail and read your E mail over the telephone so you can access it on the road.

There are forwarding systems like that for E mail and voice mail systems, I'm blanking on others, but there are a number of things in development that 800 numbers would be a way to access to allow consumers wherever that may be in the United States to dial in to a central location to access information of whatever kind without making the actual call but in many cases there will be a monthly fee attached, Internet per call and others subscription fee of $20 for an 800 number message retrieval.

Those kind of services I think have the potential to be very useful to consumers, subject to them being confident that when they called the charges will occur, they need to be confident 800 numbers are toll-free unless they have entered into the agreements and agree with those kind of protections, but I think that consumers in general do not have a wish to be prevented from entering into contracts through which they can get these kind of services unless they're the name on the telephone bill.

MS. HARRINGTON: Cynthia?

MS. MILLER: Cindy Miller, Florida Public Service Commission. Some points earlier made, in our slamming rules we had a lot of controversy over who could be the authorized person to switch the carrier, and I believe we ended up, the person who's billed or any other adult 18 or older residing in the household, I believe that's how it ended up, which the companies did agree to.

Also on the dorm rooms and calling aggregators, it seems like you could carve out separate exceptions for those entities in your rule.

MS. HARRINGTON: Thank you. Peter?

MR. BRENNAN: Peter Brennan from TPI. I wanted to contest a remark that was made by Mr. Bartel earlier. Calling cards are used for information in addition to just transmission, directory services. Calling cards are used on a promotional basis as well.

One that comes to mind was a promotion for a Broadway show where you had the logo How to Succeed in Business. This is part of the show, here are the tickets, that is a device that is comparable use.

MS. HARRINGTON: Tony?

MR. TANZI: Just a quick point. We agree with Gary's statement and have no problem with

presubscription for calling times other than those billed to a telephone number, and we got into special class of services. I need to remind everyone that there are over 60 million non residential lines assigned to large businesses, governments, hospitals, that all face the same problem, the agency requesting these types of services, I don't know if this has been discussed.

I haven't heard anything about this, but the age of subscriber be checked. Most college freshman fall

service or whatever service and that this therefore constitutes as presubscription agreement.

That may be problematic because you're going to see a lot of carriers entering the services business starting next February.

The last item is having to do with charges and purchases. There is a growing use of charging on the phone bill or buying something rather than just information service, and that may raise the amount of problematic charges because those are going to exceed the normal $30 area where these charge backs really start kicking up.

MS. HARRINGTON: Susan Grant?

MS. GRANT: Susan Grant, National Consumers League. Doesn't this all go back to the issue though of verifying that people have made presubscriptions to begin with and that's the basis on which the calls are going to be charged?

If the call is going to be charged to the telephone number and there's a PIN number that has been issued in such a way that you know that the person who's responsible for that line has that PIN number and control over it, if they choose to give that number to a family member in order to access those services as well, then I think that they're rightfully responsible to pay

the charges.

And similarly if a credit card is used, if you give your credit card to somebody else, then you should be responsible unless you're saying that somehow somebody stole your credit card and that's unauthorized use.

So I'm wondering if there's some way with the college situation where if there was going to be a PIN number, for instance, as part of the scenario, could it be recognized that in fact that would go through the University, that the University would get that PIN number and you would have another responsibility between you and your student for making sure that they pay you back, or if you want to adopt a policy where in fact the college just does not authorize making these kind of calls and using these kind of services at all, I wouldn't be obtaining a PIN number to begin with in order for the whole thing to start rolling.

MR. TANZI: May I respond to that?

MS. HARRINGTON: Yes, and then we're going to move on, last word on this.

MR. TANZI: No problem.

MS. HARRINGTON: Tony, would you identify yourself?

MR. TANZI: Tony Tanzi from ACUTA. No problem

with the second part of that. The first part of that is highly problematic, highly transitory group of people. The administration of 18 or 20,000 of these numbers that turn over every eight and a half months is just unimaginable. Our preference is to say, no.

If you want to use these types of services, we have no problem with it as long as it's direct billed, and we're not involved at all.

MS. HARRINGTON: No. Thank you very much. I think that we have greatly supplemented the record from the written comments on these issues, and I want to thank everyone for the very high quality of their participation thus far.

Now, we are moving to the billing notices of rights and obligations matter. The first issue is an issue about frequency, and this is not really an issue that received much comment nor is it very controversial, but we wanted to at least provide an opportunity for discussion of it.

And before we get into it, I'm wondering if I could just see a show of hands around the table as to whether anyone wants to talk about this issue of the frequency with which the billing rights notices should be distributed. Is there anyone that wanted to say anything?

Okay, three people did. Here's what we're going to do. The second issue which goes to the content of the notice is an issue on which there has been more comment, and we have a supplemental handout, handout B, which is the handout that we had intended to use for this part of the discussion. The Billing Reform Task Force during the break distributed this called Billing Reform Task Force Supplement to FTC Handout B.

What I would like to ask of the participants is

comments. We know that the LECs don't like what we've proposed, and so I would ask that you not restate the comments, but add any additional thoughts that people may have.

Linda, you were one of those. Do you have anything in addition to your vehement opposition to what we have proposed?

MS. YOHE: I'll pass for right now.

MS. HARRINGTON: Okay. Susan, did you have anything to add to your comment on this issue?

MS. GRANT: I don't remember what I said. Let me just --

MS. HARRINGTON: Brilliant.

MS. GRANT: -- take this opportunity to say what I want to say now, which is the value of having the billing notice at all is that it's on the bill with the charges in question, so sending it annually or something less than the frequency with which the bill itself is sent is not valuable to consumers.

MS. HARRINGTON: So you would also then say I guess in response to the last question where we asked if there's a viable alternative to including this information on the bill such as a toll-free number or abbreviated disclosures or disclosure in telephone directories, is your answer to that question no?

MS. GRANT: Not exactly. If you look at the Consumer Billing Notice that is in the handout B 2, this is the --

MS. HARRINGTON: This is the Billing Reform Task Force handout B?

MS. GRANT: Yes. I think there's something to be said for having a succinct notice like this that gives consumers the ability to call a number for more information, so I'm not opposed to that idea. I'm not interested in loading the bill up with people having to read anymore than they really need to know at that point, to know what to do next.

MS. HARRINGTON: Thank you. Albert, you wanted to say something? Did you want to say something on frequency or get to your supplemental handout or both?

MR. ANGEL: Both.

MS. HARRINGTON: Both.

MR. ANGEL: Albert Angel, Billing Reform Task Force. First by way of explanation, what we've set out

providers to use that sets forth clearly and declaratory the basic rights and obligations.

And we think that sort of thing is helpful. Now, there's been movement on this issue as a result of the expanding number of things that could be billed on the telephone bill.

At a minimal level we would like to preserve that which is accessed by 900 and billed on the telephone bill as something that we address specifically, but with regard to the frequency issue, the Billing Reform Task Force is in agreement with the FTC's proposals and are very much in line with consumer groups' expressed interest that each time a non communication service, a non deniable charge or an enhanced service type of billing occurs on the telephone bill that there be a notice and disclosure on that bill.

We think it's appropriate in addition to that for local exchange carriers and billers to have annual notices or any other disclosures, whether in the telephone book or otherwise, that perhaps are more lengthy, but we consider what we've put forward as best can be accomplished an abbreviated set that includes all of the requirements of the FCC as well as the Federal Trade Commission, and we throw in a couple words here

and there to make it work.

But that's really what we're offering up here is something for people to look at, to trace through very specifically with the FCC requirements, the Federal Trade Commission requirements and then adopt that as a safe harbor that gets utilized widely through the industry as a complete articulation of rights and obligations.

MS. HARRINGTON: Okay. We're going to hear from Linda and Peter and then Richard Bartel, and let me throw out a little incentive here, and that is that if we can complete this discussion by noon, we can have an additional half hour for lunch, but if we need to continue discussion beyond noon, we will, until our planned break time which is 12:30.

So I'm not trying to cut off the conversation, but I want you to know that if we do end at noon, you'll have time for two taco salads up at Mr. Ming's, and I don't know why I offer those comments always before I call on you, Linda, because I think that your contributions are really much appreciated so thank you. Linda?

MS. YOHE: Thank you. Linda Yohe, SBC. Unfortunately we've been given a short time to look at the notice in front of us, but certainly one of the

things that concerns the LECs as a billing agent is the requirements that are being placed on LECs for third-party services, and that certainly the third-party service provider is the one that should have the obligations to inform a customer of what their rights are and disclosures.

We believe the annual notice is working. We think that lengthy disclosures, some of which relates to disclosures that should take place in the marketing end of the services aren't necessarily appropriate for the telephone bill in every month, in every circle of the bill, that those should be made in different ways.

We certainly have -- we have inquiry numbers, customer inquiry numbers that are on the bill so that customers can contact either the telephone company and/or the service provider or the person responsible for the inquiry service, for the service provider that they can do a quick resolution on disputes.

Certainly information is on the record with the FCC on truth and billing that consumers want simpler bills. They do not want a lot clutter. The more pages, the less likely they are to read the bills, and that's a concern in creating notice requirements, extended notice requirements I guess and placing that obligation on the LEC as opposed to making that an obligation of the

service provider who can send that notice to the consumers in other ways besides the telephone bill.

MS. HARRINGTON: Thank you, Linda. Richard? I'm sorry, I said I was going to call on Peter next, but I'm going to call on Richard.

MR. BARTEL: I had two questions here. I'm assuming that these billing rights and obligations and notice rights and obligations are applied to debit and prepaid information services kinds of things where the money is already gone to the consumer, and I'm assuming that the point at which this notice is given is when the debit card issued to the prepaid card is issued.

And secondly what's going to happen when the LECs enter the information services business next year? Are they going to be able to give this notice in their tariff filings where ISPs who can't file tariffs won't be able to do that?

MS. HARRINGTON: Let me clarify. We're now talking about pay-per-call, not only presubscription billings, so some of your assumptions would not be true, Richard.

MR. BARTEL: I'm talking about pay-per-call offered by LECs starting next year.

MS. HARRINGTON: Does anyone understand? Huddle up here, FTC staff. One of the great things about

having these workshops is that we learn so much because none of us know quite what you're talking about, and I'm not sure that we want to. To sort of go off track, we're going to go back and whisper to our colleagues from the FTC about this, and we may call on you again for further discussion on that particularly --

MR. BARTEL: I'm assuming everyone knows the LECs will be able to enter the information pay-per-call starting next February 8.

MS. HARRINGTON: Peter and then David?

MR. BRENNAN: Peter Brennan from TPI group. You kind of outlined two situations, and I think that's what has got us confused. In the case of what we were talking about earlier in the presubscription arrangement, this doesn't apply. This applies to the pay-per-call, but one of the comments that I was going to make is when it comes to pass, as it will, that LECs offer the same or virtually the same services in a pay-per-call environment, we certainly would expect that they would be helpful -- that there would be a level playing field so I think that addresses it.

I had a couple of points. The billing notice provisions have been one of the outstanding successes of this regime of rules and regulations, and one of the great areas in which the industry and regulators and

really all the players have contributed.

What we're talking about here is really a twig and if you look at the -- if you look at the comments that the BRTF has put forward, the language the BRTF seeks to include is fairly modest certainly in comparison to what this Commission and the FCC has required, again I think taking in the spirit of the rule.

As a ground rule we must understand that it's common knowledge and consumers -- it's commonly accepted that 900 numbers come with a charge. 900 numbers have been in the marketplace for 20 years, approximately 20 years. A generation has grown up with 900 numbers and understands that 900 numbers have become part of our cultural lexicon.

You'll find them referred to in television shows and in movies. This isn't a situation where it's a new service. Furthermore, the preambles and advertisement requirements remain in place so the consumer has that additional protection. As well the consumers has heard it, and by the time they get this notice, which we don't

comments we supported the task force, and we still support the task force, that this should be a safe harbor, but we would like to go further.

We think it should be an absolute requirement, not a safe harbor, that any time a 900 number call appears on a phone bill that this notice should appear, and to clarify something we said earlier, there's the question about whether this should be every month.

I don't think there's any proposal that it should be every month. There's a proposal that it should be annual and there's a proposal that it should be just in those cases, just in those times where a 900 number call appears on the telephone bill.

So I don't think there's a proposal out there. You're assuming like we would like to assume that there's a lot of repeat customers, and that's happened, so then I would like to reiterate that we would expect that the Commission would write the rule in such a way that there would be a level playing field so that when the LECs and others offer services, that their services have the same consumer protection.

MS. HARRINGTON: Marianne Schwanke has a clarifying remark.

MS. SCHWANKE: Regarding Mr. Bartel's question about the flexibility to offer information services

after next February and then instead of putting this notice on the bill, putting it in a tariff, my understanding is since information services and other enhanced services are not tariffed services, it would be improper and invalid to put a notice in a tariff related to a non tariff service.

So I guess the answer would be that they would not be able to do that. They would also have to put up a notice on the bill.

MS. HARRINGTON: Thank you. David?

MR. MATSON: That's what I was going to say.

MS. HARRINGTON: Good, okay. We got it right. Mark has a question.

MR. HERTZENDORF: Mark Hertzendorf. Does safe harbor language that includes an admonition to consumers about the responsibility to pay legitimate charges have the potential to reduce charge backs, and is there any empirical evidence on there?

MS. HARRINGTON: Do we have any answers to Mark's question? Gary, I think you look like you have an answer.

MR. PASSAN: I think the answer is categorically yes, and it's hard to give you a specific answer, but as part of preparing for this, I took a large number of consumers that had paid their bills and had not paid

their bills and got on the phone and called them and asked them, What was your position, what happened, why were you given a credit, why didn't you pay your bill, so forth and so on.

And I think one of the things that came out of that was that there was somewhat of a lack of clear understanding, and it varied a little bit from part of the country to part of the country. Certain LECs put out much more detailed notices to their respective consumers than other ones did.

This we feel from an industry perspective will definitely make a difference in charge backs because it will apply a level of consistency in the rights and obligations of the consumers across the entire country, which makes it simpler for everyone to understand how to communicate with the consumers on a regular basis.

So I found it definitely will reduce charge backs, and I've found from my communications that there's elements of this document that maybe are clear

Debbie and Susan whether you're moving into the comment on the proposed alternative from the Billing Reform Task Force or are commenting on or jumping into this -- fine. Debbie, can we hear from you, and I think what we'll do is take the questions, and my understanding is Susan wants to talk about the alternative, so that's where we'll go.

MS. HAGAN: Debbie Hagan. I just want to make sure that I understand this correctly because I thought this was supposed to be all telephone-billed purchases regardless of a telephone call. Therefore those instances in which our consumers supposedly filled out a sweepstakes box entry which included their telephone number, and then subsequently those charges were billed on their telephone bill, that's covered.

Is that not correct, that what is happening here is that the LECs are becoming a new billing mechanism for all types of purchases and that I think what was important to us is that if you're going to move to that point, then it has to be similar to what the banks do under the Fair Credit Billing in that consumers have to know their rights because it's just a new billing mechanism, and all sorts of things are showing up on the bills and it doesn't necessarily come from a telephone call.

MS. HARRINGTON: Are you by any chance directing that question at anyone because I see you looking down the table, and before we comment, did you want Linda or Richard, or are you looking at anyone in particular?

MS. HAGAN: I want to be sure I'm understanding the rule correctly, and that's the reason why it's going in this direction.

MS. HARRINGTON: Marianne?

MS. SCHWANKE: Well, if I understand your question, the proposal would require billing notices for all telephone bill purchases, not just 900 and not just pay-per-call, which actually relates directly to my question which was going to be: This particular notice as submitted by the BRTF only mentions 900 numbers, but is there any reason why this same notice could not be applied more generally as would be required by the proposal to all telephone-billed purchases?

MS. HARRINGTON: Albert?

MR. ANGEL: Albert Angel, Billing Reform Task Force. We're in agreement that the FTC proposed rules addresses telephone-billed purchases, and we can in fact as an organization get behind the inclusion of the words "telephone-billed purchases" just after 900 numbers, but because there's a whole subset of issues with regard to adjunct to basic services as well as the dispute

resolutions that were applied, we didn't want to be too presumptuous.

We wanted to step first from the standpoint of what was agreed upon and a consensus position in the '97 workshop and then move to that, and we didn't want to draw too much fire on telephone-billed purchase until we establish the safe harbor from the 900 area.

But the end point is, yes, we would like to see a consumer billing notice that's comprehensive and addresses both, and with the inclusion of three or four words here, we would have that.

MS. HARRINGTON: Adam has a question.

MR. COHN: This is Adam Cohn. It sounds like there's a tension between what some of the local exchange carriers which were saying is that they wanted more limited disclosure, maybe an annual billing notice option, and 900 number providers who seem to want a disclosure to make sure people know their obligations to pay for charges that they legitimately did incur.

But yet the rule proposal requires a billing notice disclosure every single time there's a telephone-billed purchase of any kind.

Is there -- is there maybe room for agreement between the parties on something along the lines of a requirement that every time there's a pay-per-call

charge, there would be a billing notice disclosure but in other contexts there wouldn't need to be a disclosure every time there's a telephone-billed purchase?

MS. HARRINGTON: Would anyone like to comment on that, or would you all like to think about that?

MR. BRENNAN: May I?

MS. HARRINGTON: Peter?

MR. BRENNAN: Thank you. Peter Brennan. From our perspective it kind of depends on what the disclosure says. If the disclosure fails to tell people that they may be reported to a third-party collection agency and if it fails to tell them that -- to specifically lay out their responsibilities, I suppose it doesn't much matter to us because that's really the guts of what's needed here.

I mean, I was trying to -- rather than responding to my question a few minutes ago I was trying to remember in my mind if I could come up with any categorical evidence, other anecdotal evidence that people -- that we're confident that this would make a difference.

I'm very confident this would make a difference, but I don't have anything empirical to show you about that. It's all anecdotal. It's the conversations we've had in our customer service offices. It's the

experience of our collection agencies and all of that.

So to answer your question I think there probably is -- it really depends upon the nature of what other services are thrown into that cauldron of telephone bill services. If it's a subscription service that comes every month, perhaps we can agree that the first month that that charge appears that it would be -- that the disclosures would be along the lines of what had been suggested in the FCC proceeding, that new charges somehow be highlighted.

I think there's certainly room to discuss that and work through it.

MS. HARRINGTON: We're going to hear from Linda and Albe and Susan, please.

MS. YOHE: Linda Yohe, SBC. I guess I would like to respond to at least a concern that is out there that the telephone bills are being used for purchasing

in compliance with the billing services that we offer, so I think there is a misconception that we are putting other things besides telecommunications related services on the bill.

Secondly, I think that the notice that is described here in your comment about third-party credit reporting, you're applying certain things to a statement on a bill that's being rendered by the LEC that may or may not be true and may be a possibility that the question will come to a LEC as opposed to the third-party service provider.

Certainly it's the third-party party service provider's option to report to a credit reporting agency, but the fact that it's sitting on a notice that would be on my bill wouldn't necessarily point the question to me as a LEC as to if I'm going to be turning over these services or nonpayment of these services would make the LEC turn those over to credit reporting agencies.

So I have a concern that certainly we're going to hopefully have a chance to brief some of these since this is the first time we've seen this notice, but I have a concern about the way the notice is written, and the obligation again should be that if a notice is provided, it should be provided from the service

provider's standpoint or the obligations should be on the service provider.

forth in bold.

And with regard to that language, we feel that there is unmistakable support in both the statutory framework and a number of cases that support it.

Moreover, we think that the more appropriate path to take here in terms of alerting consumers is to really alert them to the potential for nonpayment. Historically what happened was when the billing notices were crafted for the first time, they were essentially translated by consumers to charge back without consequence.

Then we came to regulators and said, This isn't equitable, we're being hurt, and moreover, there's a whole set of consumers out there that are experienced and know how to beat the system, and that's not right.

Now, I think TSIA has done an admirable job in pointing out in its comments the fact that now the worldwide web becomes a way of further communicating ways in which to beat the system, so anticipating the day when local exchange carriers are themselves purveyors of enhanced service with their own name on them, on their own bill, and local exchange carriers and interexchange carriers and billing entities are offering enhanced services in something that includes telephone bill charges, we're trying to take specific note and

reference of what's being proposed in the FCC context in the Truth and Billing procedure, compare it with what's

the need to include not just 900 numbers but any kind of telephone-billed services that ultimately come under the rule in the notice and the need for the notice to appear on the bill any time any of those covered services appear on the bill.

I do have some problems with the language here and would be happy to comment further, and I'm just going to give you my initial reaction now. And even though part of this language comes from the FCC, with all due respect, the part that says the 900 number service provider has the right to pursue the collection of these disputed charges I think is rather chilling and might be construed by many consumers to mean that they're in the right.

And I think what it really should say is that the service provider, whether it's the 900 number service provider or any other kind of service, may choose to pursue the collection of these disputed charges.

If we retain the language of "has a right," then I think there should be something added, and I loath to make it even longer, that the consumer has the right to defend him or herself if he or she still believes the charges are not justified.

I'm also concerned about the inability of the

consumer to obtain other kinds of non communication services in a dispute about one kind of telephone bill charge, and if we just use 900 numbers as an example, if it's a disputed 900 number charge and the dispute is not resolved and the consumer continues to believe that it's unauthorized or unjustified or has a problem with it, I would not want to see them blocked.

And so I wouldn't want the billing notice to say that they were blocked from getting other kinds of non communications types of services that don't have anything to do with that particular vendor with whom their dispute may be or the kind of service that their dispute was about.

And simil åic

put on bills, and generally it was my impression that there was no prohibition for any particular type of billing.

Theoretically it could be done if contracted for, and that certain LECs may have had an agreement that they should only be telecommunications related, but they necessarily could not prohibit non telecommunications related charges on their telephone bills.

And in fact many of our consumers receive charges for travel clubs, discount buying clubs, things that were non telecommunications related, and I think that's what raised our concern, that if this was going to become an independent type of -- this billing mechanism like credit card or any other way to pass through a charge, it then needs to be similar to the Fair Credit Billing Act, in that you get a notice and you have a right to dispute, and there's nothing to prohibit LECs from passing through non telecommunications charges, is there?

I didn't get that impression, and that was our concern.

MS. HARRINGTON: I believe the answer is no.

MS. YOHE: No.

MS. HARRINGTON: All right. Peter?

MR. BRENNAN: Thank you, Peter Brennan, Tele-publishing. Actually my comments would echo -- some of my comments would echo that. There is nothing to prevent that, and with due respect to SBC, when SBC represents that they'll only bill telecommunications related services, I suggest that's until they decide that they want to sell sweaters.

This has been a moving target since the beginning. That's been one of the problems. Also I think it's important to realize that this is one piece of a much larger mosaic that has to do with what kind of data -- it has to do with the whole dispute resolution procedure, which we'll be talking about later in the day and tomorrow.

So I want to caution our thinking that this is just not one part of the puzzle, and thirdly I would just like to ask Susan if I may, Susan, do you disagree as a matter of fact with the statement that we, telecommunication providers, have a right to pursue collection of disputed charges?

MS. GRANT: No, I don't, but I am concerned about the complaints that we have received from consumers who were intimidated into thinking they have to pay these charges or their credit would be ruined or something else adverse would happen to them.

And I want to make sure that even as the rights of the companies are emphasized, equal emphasis is given on the rights of consumers to continue to dispute charges if, in fact, it isn't resolved at this level and they feel that they're not justified. It's up to them whether or not to do so, but I want to be sure that people realize they have that right.

MR. BRENNAN: May I respond just once more? Coming out of the newspaper business, we believe, as they would say in the newspaper here, is that this bill contains charges to your call, and it says, Which if you wish to dispute any specific charges that are on this bill, call the number to be guaranteed protection provided other than the dispute resolution protection and on and on.

That is the first and foremost message of this. Generally if people are concerned about the length of the notice, if people are going to read any of it, they'll read that, and there is a growing number of sophisticated consumers who understand these things so I don't think that that's a reasonable concern.

MS. HARRINGTON: I think --

MS. GRANT: Can I just respond very briefly?

MS. HARRINGTON: Yes.

MS. GRANT: I think we need to make sure that

even unsophisticated consumers are able to understand. I don't want to peg this at the level of sophisticated consumers.

MS. HARRINGTON: Adam has a question. Marianne has a question, and then we will call on the participants. I have the participants whose post-its are up noted. Adam?

MR. COHN: SBC has suggested today that perhaps the vendor should have some obligation to send out a billing notice disclosure. I was just curious as to what the participants thought of that, especially the 900 number providers who seem to have a very strong feeling that the notice regarding consumers' obligation should be sent out. Do you have any comment?

MS. HARRINGTON: If we could have quick comment on that.

MR. BRENNAN: One word.

MS. HARRINGTON: Yes, that would be best.

MR. BRENNAN: It's ludicrous.

MS. HARRINGTON: Thank you Peter.

MR. ANGEL: That's what we're striving to do here. The 900 providers are asking that the specific notice articulate the government mandated language, and the LECs essentially have taken, I'll decide what's right and put it on my bill and you'll take the

consequences at your cost.

MS. HARRINGTON: Gary?

MR. PASSAN: Very quickly, I think disassociating the rights and obligations from the transactions makes more confusion, not less.

MS. HARRINGTON: Okay. Marianne, you had a question?

MS. SCHWANKE: The proposed language that you've handed out says that if you do not pay legitimate charges, your ability to, et cetera, et cetera. I just wanted to know what you had in mind by the word "legitimate" and who would be making the decision whether or not a charge would be listed or not.

MS. HARRINGTON: This is a question from Marianne to Albert.

MR. ANGEL: If I recall correctly that language was actually recommended following the consensus discussion because we were trying in simple words to distinguish legitimate from non legitimate, and, for example, if we do have a case where someone is abusing the system, a consumer is just routinely stealing services from information providers or taking cable services, taking Internet services or what have you, and it's proven that these are legitimate services, we're making a distinction that those should be the subject of

a collection effort and that it might impact credit reporting.

MS. HARRINGTON: We're going to hear from Richard and Tony, and then Mark has a question.

MR. BARTEL: I had a very quick comment.

MR. ANGEL: Excuse me, can I just add? That language is contained in the FCC rule which is the attachment for section 64, 1510, subsection A (2)(i)(D).

MS. HARRINGTON: Richard?

MR. BARTEL: I wanted to just remind the states that they should not be lulled into a false sense of security that a federal scheme is going to work for a long run, because as I said starting next year the LECs are going to enter the information services business or enhanced business, and that's going to be a significant shift from mostly interstate to intrastate and intraLATA billing which will be -- there will be jurisdictional issues.

And your complaint process at the state level may be overwhelmed by that shift that you won't find solace in the federal rules.

MS. HARRINGTON: I would just note for the record that the states have never been lulled into any federal scheme that solves anything, but, Debbie, was

that what you were going to say?

MS. HAGAN: No comment.

MS. HARRINGTON: Okay. Tony, please?

MR. TANZI: Quick question. Tony Tanzi for ACUTA. What constitutes timely payment?

MR. ANGEL: State to whom.

MS. HARRINGTON: Gary, answer?

MR. PASSAN: I think there's a proposal in 308 that talks about notice of provisions of when the information of nonpayments can be passed on. It seems to me upon reaching that specific criteria, I think we all would reasonably believe that payment isn't going to happen, and it's a nonpayment.

MS. HARRINGTON: Peter?

MR. BRENNAN: I want to make the further point regarding the suggestion that a mail-in or some notice be directly to consumers, it's ironic particularly that issue be raised by SBC which does not provide to billing and collection companies and to non carriers the full name and address which essentially prevents us from sending that notice even if we had the financial wherewithal, and that's why the idea was ludicrous.

And I thought it would make a point that it's the constant tendency of LECs in their comments here and at the FCC to be very proprietary about the ownership of

the phone bill and in some cases refer to the sanctity of the phone bill.

Well, that may be the case as a legal matter, but the reality is that that circumstance was created by a legacy which all of as rate payers paid going back to the pre divestiture days.

MS. HARRINGTON: Now, later on this afternoon we have a whole hour set aside about talking about vendor LEC relationship issues and the like, so we're going to not develop that theme further here.

Mark, you had a question.

MR. HERTZENDORF: I'm wondering if the question might be better in the afternoon since --

MS. HARRINGTON: Probably.

MR. HERTZENDORF: That's what it was about, the LEC vendor relationship.

MS. HARRINGTON: Can you hold it, do you think, for later on?

MR. HERTZENDORF: I can hold it.

MS. HARRINGTON: Does anyone else want to add anything knowing that if they do they're standing between this group and Mr. Ming's taco salad? Albert's buying lunch for everyone.

MR. ANGEL: It's a technical point, and I think Ed Laverne (phonetic) can address it very clearly, and I

know he's passed me notes to do it, but I'll leave it to him if that's all right. Ed Laverne.

MS. HARRINGTON: Here's Ed on behalf of the Billing Reform Task Force, Ed Laverne.

MR. LAVERNE: The only point is the first question you asked this morning was about the annual notice. The concern we have with the LEC proposals on the annual notice is that the language that you see here in italics will not be provided as we read it at all in these billing notices if the LECs proposal for the annual notice is adopted.

In other words, right now with respect to 900 number charges, the FCC already requires the underlined language to be provided every time there's an unidentified charge on the bill.

MS. HARRINGTON: Let me know just if I can interrupt for the record that we're talking about Italicization and underscoring in the proposal that has been submitted by the Billing Reform Task Force as a supplement to FTC staff handout B.

MR. LAVERNE: And our concern is that if the LECs or any entity are permitted to use an annual notice as a vehicle, then the italicized language in this document would not be provided in conjunction with that statement that's sent out pursuant to the FCC's

requirements, and that's a concern to us, and I think it would be a concern to the consumer groups as well.

MS. HARRINGTON: Would anyone like to add anything before we adjourn for lunch? Let me just say that we will resume promptly at 1:00, and the subject then is initiating a dispute under the rule. This is a fairly controversial topic. We put it after lunch to help everyone stay awake.

I want to thank the participants. This is really a workshop. We're asking everyone to work hard with us to craft a rule that makes sense, and I'm very appreciative of how hard you've all worked this morning, and we look forward to more hard work this afternoon, and please be back at 1:30. Thank you.

(A lunch recess was taken at 12:20 p.m.)

AFTERNOON SESSION

(1:30 p.m.).

MS. HARRINGTON: Let's start, please. We are going to resume with the items scheduled for this time, initiating a dispute under the rule, and as I indicated before we took a break, this is a fairly controversial subject, and we scheduled it after lunch because if you went upstairs and ate several taco salads, we hope that this will be lively enough for from keeping those eyelids from dropping.

So that you know, before participating during the public participation portion of the day, we are going to put this out. We'll pass them out now, if anybody wants one. And they'll be out by the coffee machine, so if anybody wants to participate during the public participation segment of the program, we need you to fill out a card with your name and affiliation, if any, and the subject or subjects that you wish to speak to.

And we will call on you during the public participation segment. If you don't fill out a card, we won't call on you. I'm a rule kind of girl, and that's the way we're going to do it.

So, please, if you want to participate, we'll put these out by the coffee pot and just fill out a

card, and we'll get to you during the public participation segment.

Did any of the participants have any questions before we proceed into the afternoon discussion? You are not David Matson. Will you tell us -- you have her name? Fine. You're not Linda.

Actually, what I would like is for the people who have just joined us at the table for this session who weren't here this morning to please introduce themselves. Can we begin with you?

MR. FARRELL: Sure. I'm Mark Farrell with SBC Communications.

MS. SCHALLENBERG-TILLHOF: I'm Helen Schallenberg-Tillhof with Sprint Local.

MS. HARRINGTON: Mark and Helen.

MR. PERMUT: Phil Permut.

MS. HARRINGTON: Everyone needs to use a microphone when they speak, so please would someone swing a microphone. Mark, would you?

MR. PERMUT: Phil Permut representing CWWI.

MS. SANFORD: Jill Sanford from the New York Attorney General's office, here representing NAAG, Association for Attorneys General telecommunications division.

MR. GOODMAN: I am John Goodman from Bell

Atlantic.

MS. HARRINGTON: Do we have any other changes? Okay. Does anyone have any questions before we begin the afternoon session? All right. Then let's get right to it.

Loretta?

MS. GARCIA: No.

MS. HARRINGTON: I'm sorry.

MS. ELLIOTT: Adele Simpson for the afternoon. No, I'm Roy Elliott of the ITA.

MS. HARRINGTON: We're going to discuss the initiating of dispute under the rule, and this discussion gets us right to the definition of a telephone-billed purchase. Should this definition be expanded to protect consumers whose telephone bills contain non-toll charges that did not result from ANI? That is the first question for discussion.

Should this definition be expanded to protect consumers whose telephone bills contain non-toll charges that did not result from ANI?

Is there anyone at the table who thinks that this definition should not be expanded to protect consumers? I don't want you to talk. I'm just looking for a show of hands, anyone who thinks that this should not be done.

The first ticket I saw up was Jill Sanford. We'll hear from Jill and Jacquelene and then Mark. Jill?

MS. SANFORD: Yes, Eileen. When I was here actually two years ago representing NAAG, we had a discussion about what we at that time were terming phantom billing, charges appearing on consumer's phone bills for which the customer had no idea the origin of those charges and in many cases had not authorized those charges.

In the last two years, that has evolved and is now termed cramming, and in that time period since I was here in '97, the New York Attorney General's office as

And I think the Attorneys General really implore the Commission to consider expanding the definitions in the rule to address this new arena and particularly now your definition of the telephone bills purchases which will then serve as a trigger for the dispute resolution process which we are going to get to in a little bit, which again the Attorneys General also support.

I think that we are dealing with a moving target here as someone mentioned this morning, and we need to make sure that the definitions are as broad and as encompassing as possible to really address both the current marketplace and the evolutions in the marketplace.

MS. HARRINGTON: Thank you, Jill. Let me just remind everyone, and especially for the new folks at the table, if you wish to speak, put a post-it on your tent and please identify yourself for the reporter as you begin to speak.

Jacque?

MS. MITCHELL: Thank you. I would like to step back another step -- excuse me, Jacquelene Mitchell with CERB -- step back to a higher level, and that is to request that or to identify that we believe that there needs to be a clearer definition of what the services are that need to be included in this.

We don't argue that there shouldn't be the definition, but we need to know what that definition is so that we can -- we can understand the rule and be able to play by the rule.

In looking at the proposed document, where we talk about those things that are excluded and you refer to the local exchange telephone service or interexchange services or any services that the FCC determines by a rule, in the clearinghouse environment, from an interexchange carrier perspective, we see things such as personal 800 and calling card to be a traditional kind of service.

And so we would like to clarify or to understand from the FTC what those are, whether they truly are items that should be accepted from this, if they fall under that rule, so for clarity we need to understand exactly what a telephone-billed purchase is.

MS. HARRINGTON: One of the points I think that

excuse me.

I'm sorry. Let's see. We were going to hear from Mark.

MR. FARRELL: Mark Farrell, SBC Communications, and the first point I would like to make is SBC does not support the expansion of the message of bill purchase or telephone purchase, and I think the FTC in trying to

implemented those, we knocked cramming down by 75 percent, cramming complaints.

So significant things are already being done that are addressing the problem, and there's some misinformation about what we'll bill for and what we won't bill for.

it. It requires expensive data storage systems. We've got to store all this stuff. It just doesn't reflect reality.

Consumers want the services. They want them turned up right then and there. They don't want to wait a month, and I don't think the rules reflect reality, and they shouldn't be adopted.

MS. HARRINGTON: Adam I think has a point of clarification.

MR. COHN: Yes. I had one clarification, and that is that the current rule, the definition of telephone-billed purchase currently includes some of the scenarios that you described where someone calls a number and places an order and they're billed under the basis of ANI.

So what we're talking about here is whether or not there should be an expansion of the definition of telephone-billed purchase to cover situations where, for instance, as Jill described someone signs up by sweepstakes form.

So I hear what you're saying, but the current rule which is dispute resolution requirements already applies to some of the scenarios that you described, so it doesn't really -- the question of expansion doesn't really get to that.

MR. FARRELL: Well, in response, the way I look at it, the current rules address pay-per-call services. What the proposed rules are doing is they would affect

going to bore everybody with that all over again, and I think as with SBC we have found the cramming complaints from our consumers have dropped in a dramatic way.

As to whether the definition of telephone bill -- a telephone-billed purchase ought to be changed, our answer is no. Congress got it right when it wrote the definition, and that is the definition in the statute, and it's obviously the definition in your rules now, and that is what it ought to be, and I'm not sure that the Commission has the power to go beyond what's in the statute and what is at this point mirrored in the rules.

MS. HARRINGTON: Peter? Peter, I'm sorry, had you taken your post-it down?

MR. BRENNAN: I did, but I did want to respond to something. Actually I wanted to make one comment and ask the gentleman from SBC. Peter Brennan, TPI. TPI would like to advocate that it be made clear in any definition relative to this that these rules apply to services provided by the LECs, all services provided by the LECs because we believe it's important to be at a level playing field.

And my question to the gentleman from SBC is: Were you speaking for all of the RBOCs when you said that you will not be offering any services other than

telecommunications related services, and do you define services -- and I wonder how broadly you define services as a telecommunications services?

Are they just phone calls? Are they Internet services? Are they purchases of Internet services? Are they purchases of information that relates to Internet services?

MS. HARRINGTON: Mark, would you answer that?

MR. FARRELL: Sure. I was only speaking for SBC Communications. In terms of telecommunications related

because it would capture anything that happens to appear on a telephone bill, is overbroad.

There have been references to telecommunications related services. That's a term that's not only not defined in the rules or the statute, it's a term that is not a standard. Telecommunications related services is a category that's expanding as services all merge into single pipes anyway, cable, telephony, Internet access.

I think most of us believe it's all going to be the same thing in a few years anyway or at least it's going to come into your home. If not I'll be looking for a new job in a few years.

I would like to suggest that the Commission at a minimum needs to consider specifically carving out some services that have not been subject to abuse and don't seem to be subject to abuse.

Given at this time most areas only have one cable provider it would be very difficult for someone to cram cable charges on to a bill. The current rule would also consider wireless telephone charges to be telephone-billed purchases.

In fact, the current rule relies on terms that aren't defined in the communications act or elsewhere when it refers to interexchange services or local exchange services. More specifically I'm referring to

telecommunications services which is a term that's defined in the Communications Act, and it ought to

going to get into your local phone services and video services in coming years. I think it's really an issue apart from the issues we're dealing with here. I think the kinds of services that are subject to abuse are

transmission of electrons going to be considered a telephone service in the future or not. I think the very category of telephone-billed purchases starts getting very hazy as we look into the future.

MS. HARRINGTON: You're suggesting on the one hand excluding that category of services, but also making the point it's hard very difficult to define that category of service.

MR. BOLIN: That's correct.

MS. HARRINGTON: It's a very honest observation. Allen, did you have a question?

MR. HILE: I do. It's for Jim. Since the result of defining a purchase as a telephone-billed purchase and basically to bring those kinds of transactions within the dispute resolution rights, why would that be a problem if there aren't abuses?

MR. BOLIN: AT&T hasn't specifically objected and doesn't object to the dispute resolution provisions. The provisions that are much more problematic are the segregation requirements on the bill because they make bundle billing all but impossible.

You can't offer a customer say a bundle of Internet, wireless, wire line and cable services for $100 a month at one price for that package. Instead you have to break out each element that's not wire line

telecommunication services, I think that we would not object to having the dispute resolution practices applied but we're very much interested in the one bundle billing because that's what our customers tell us they want.

MR. HILE: Okay.

MS. HARRINGTON: Jacque, then Cynthia, John and then Susan, and I see Richard's tent up too.

MS. MITCHELL: I have two comments in regard to the previous conversation, one to follow up on a comment from John from Bell Atlantic, and from Mark Farrell's observation about the improvement that we have seen in cramming across the United States in the last year.

In a non statistical based sample that we did with the LECs, we found from 50 to 95 percent improvement in the complaint levels, reduction of the complaint levels that they had been receiving.

In our own companies in the clearinghouse environment we've seen a 75 percent reduction in complaints in certain areas, so we know that the efforts that have been put forward in the last year have been very effective, not only from the coalition guidelines that we have implemented but as well as the oversight that the LECs have performed in providing services to us, so we believe that a tremendous improvement has been

achieved in the local world.

I would like to comment about the concern that we feel about carving out any particular kind of business or service today. We understand that the local exchange carriers have certainly not had a tremendous amount of problem with cramming in their environment, but we do know that there have been some cases reported across the board for several of them, so we would not want to eliminate the opportunity that the LECs certainly have to be able to cram on their own bill.

And I would just read to you from the Los Angeles Times, January 16 of '99, to quote: "Hundreds of consumers have complained that the telephone company is using misleading advertising and sales tactics to pressure them into buying packages of add on phone service that they don't want or need."

So we want to be careful how we address those services, and again back to my original comment, we need to clearly define what those services are that are categorized as a telephone bill service.

MS. HARRINGTON: Thank you. Cynthia?

MS. MILLER: Yes, Cynthia Miller, Florida Commission. I was prepared to address I guess SBC and Bell Atlantic had mentioned seeing a decline in cramming, and now another comment on that. We are not

seeing that in Florida. We're seeing an increase, and I'll be glad to send that into the record, and maybe we can provide more detail, but we have not seen a decline at all.

MS. HARRINGTON: Thank you. And let's just let the record reflect that the Florida Commission is going to put a bar graph into the record that Cynthia just displayed, and we'll have that down at the end of the table for any of the participants or if any of you want to take a look at it.

John?

MR. GOODMAN: I wanted to give an add-on to Allen's question of why do we care what the deposition is, if all it means is as a dispute resolution process applies, and if that were all that it did mean, that we had to handle questions and complaints as stated in the process, I don't know that we would care all that much beyond the point that Jim made.

But in the proposed rules there is an added liability element that knew or should have known. I know in talking about that I suspect a bit later on so it is not just whether we have to answer the complaint, giving them the rights under the statute. There is more to it than that.

MS. HARRINGTON: Susan?

MS. GRANT: I want to start by commending the local phone companies for the progress that they've made with cramming but remind them that they're not the only players in town with increased competition. There will be other people providing a variety of phone services and non phone services and lots of different arrangements for billing consumers.

And the bottom line is that consumers need to be protected from charges for services that they did not agree ever to buy from being on their bills. It doesn't matter what you call the service, and in some cases the names of the services have been entirely made up when people have been charged for voice mail, paging, personal 800 numbers and other services that it doesn't appear they even really had, but it was a thing to put on the bill.

I think it would be a mistake to try to say it only applies therefore to certain kind of services that are not susceptible to complaints and not others because we would see unscrupulous companies just gravitate to describing their services with those terms.

MS. HARRINGTON: Thank you. Richard?

MR. BARTEL: Yes, I had a question for the LEC participants in following up their discussion. Do you see your companies offerings starting in 2000 and most

likely getting into the information services business? Will that cause the scope and depth and volume of so-called telephone-billed services to increase by your own companies?

MS. HARRINGTON: That's a question for the LECs?

MR. BARTEL: Yes.

MS. HARRINGTON: Could I see hands, if any of the LECs want to answer that? John would like to answer.

MR. GOODMAN: Local telephone companies are in the information services business now. We have been to one extent or another at least on the Bell Company side since 1988. Have all of the other LECs who do not have the stigma of being Bell Companies have been in it even longer? I'm not aware of any problem on the under growing of information services provided by Bell Companies or other LECs, so I don't know why anything is going to change any time soon.

MS. HARRINGTON: Mark Hertzendorf had a question.

MR. HERTZENDORF: Yes, it seems to me that maybe almost by definition the problem with cramming has to do with placing charges for one company on the bill of another company, and I was just wondering if anyone --

what anyone might think about the idea of having the rule perhaps make a distinction between whether or not the bill is included in an envelope that your company is sending out or whether it's included -- your charges are included in someone else's bill and they're paying for the envelope to go out?

Is that some way to perhaps make an efficient distinction and avoid over regulation?

MS. HARRINGTON: Gary?

MR. PASSAN: Mark, that happened to be right on the comment I was going to bring up.

MS. HARRINGTON: Could you use the microphone?

MR. PASSAN: Gary Passan. I think both Jill and Deborah and Susan I think have made a very valid observation over the course of this morning, and that is that the telecom bill is becoming a very general purpose bill, and because it's a very general purpose bill it means that there's lots of people that are going to have access to it.

So in my mind the LECs taking on third-party billing they -- almost by definition there needs to be some rules for dispute resolution which is why we're here.

not affect the turning off of your phone service, really seems to me that it leans -- it allows itself to be placed on a bill in a manner that should be consistently applied, whether it's a LEC applied transaction to the bill or whether it's a third-party applied transaction to the bill.

MS. HARRINGTON: Gary, thank you. Mark, you've had your post-it up. Do you want to answer that question and also say whatever else it is that you want to say?

MR. FARRELL: We agree with -- with Mark's comments. I think that there really ought to be a

And if you look at the rules, the Pay-Per-Call Rules, I think what Congress was trying to do was to say that the telephone companies are regulated by the state PUCs and the FCC, but a lot of these service providers or information service providers are not regulated by the FCC or the state PUCs, and they wanted to have somebody to be able to regulate them, and they put the FTC in charge of that.

And I think -- so I think that's why -- I think you got two reasons why that distinction is appropriate, and one is that the complaints are about third-party

because you people were amply regulated.

It seems to me you can't have it both ways. To set aside a certain class of services just because they're offered by the incumbent, former monopolists, whatever stigma one might wish to attach to that, is simply not fair.

As a simple matter of fairness, and I would remind you that the clear congressional intent of the TDDRA was to foster pay-per-call services, and pay-per-call services were understood as being those services for which the local bill or telecommunications bill went out for.

If the Bell Companies or the LECs, even the incumbent Bells or others want to set up a separate regime, want to get out of the billing business and establish perhaps a Switzerland or a mutual third-party who would handle all of this, that might be a workable solution, but at this point it doesn't seem to me that you should be allowed to have your cake and eat it to.

MS. HARRINGTON: I would just note for purposes of clarification that the LECs already are subject to the Commission's Pay-Per-Call Rule to the extent they operate as billing entities as that term is defined, and I believe that the clear and express intent of the Congress was that the FTC should regulate billing

entities, and the FCC through its Pay-Per-Call Rules should set standards for common carriers provision of common carriage and transmission services to information providers and other vendors subject to the FTC's rule, and so that scheme has been in place for some time.

Albert?

MR. ANGEL: Albert Angel, Billing Reform Task Force. I would like to focus the discussion a little more and offer an observation that CERB articulated in its comments what I thought to be a fairly workable line, and that line was drawn in favor of identifying basic and adjunct to basic with very specifically enumerated service categories like the call waiting, call forwarding types of services as those that could be offered personally to tariff and subject to the existing federal and state regulatory regime.

And on the other side of that line, there would be the so-called enhanced services, non deniable services including such things as Internet access.

And I think while consumer protection issues is clearly the first order of business here, we really need to be very mindful of the anti-competitive consequences of giving an incumbent monopolist an edge over entities that would want to provide the same service through billing mechanisms offered by the LECs.

And I think the balance that CERB has articulated in its comments echoes the good work that's been done over at the Federal Communications Commission in a workshop context, and going beyond that, that was subject to a rulemaking proceeding in Truth-in-Billing, and the FCC in its report and order didn't upset that workshop balance.

So I think we should really address ourselves to the services that would devote telephone-billed purchases, and the Billing Reform Task Force is not in favor of making distinctions based on who's providing it because very often there is the grouping or aggregation of messages and pulling up a percentage to say it's half a percent, but that's being skewed by the millions of transactions that are basic or adjunct basic.

MS. HARRINGTON: Okay.

MR. ANGEL: One further point to inject a little bit of reality into this, when you operate on the other side of the line, the enhanced services side of the line, the charge back levels are going to be much higher even if a person was completely scrupulous and completely above boards in terms of their disclosures trying to do the right thing, and that has not been recognized in regulatory forums. It's not been recognized by the credit card companies, and it

certainly hasn't been recognized by the telephone companies.

So when everyone is subject to the same rules, we're going to see different standards emerge, but by confusing it, we're going to be in this conundrum forever.

MS. HARRINGTON: Jill and John and Jim wanted to make comments, and then Marianne and Adam have questions, and I'm wondering if we could hold the questions, finish those three comments and then come back to them.

Would that work for you or do you need to jump in with questions on these comments? Marianne? Marianne's questions follow up on Albe's comments.

MS. SCHWANKE: I would like to hear more discussion if other participants have comments on this issue that you just raised as to the appropriate exclusion from telephone-billed purchase. On the one

MS. HARRINGTON: And further refinement on that question from Adam?

MR. COHN: That was exactly my question.

MS. HARRINGTON: And I'm sitting between them.

MR. COHN: I wanted to add to that. I guess their suggestion whether it should be basic or adjunct to basic and I think someone mentioned deniable versus non deniable. I don't know if that's the same thing as basic to adjunct to basic.

It seems like this is all a question of how exchange of local service is defined by the rules since that's really what the exemption is about.

MS. HARRINGTON: Jill, John and Jim, were you planning on saying anything that's responsive to these questions? This is really what we wanted to discuss during this segment, and I'll get back to Gary and Jill. I know Gary has a response too, but John and then Jim, please, on this question.

MR. GOODMAN: Adjunct to basic, basic are all terms that the FCC came up with in the 70s. They were probably out of date as soon as the FCC came up with them. They're certainly out of date now.

I think it would be a mistake to base anything in rules on terms like that, and if Jim's point earlier was that all this is is ones and zeroes going over wires

to try to put them in regulatory buckets that had holes in them 25 years ago, I think it's a bad idea.

MS. HARRINGTON: Jim?

MR. BOLIN: Jim Bolin, AT&T. Just to amplify John's remarks because I think they're right on target. Basic, adjunct to basic as categories might provide a few useful insights, but they're the subject of litigation now constantly before the FCC including which basket it fits in.

I have at least four or fire active matters pending now in which one of the questions for the FCC is to resolve what bucket the service fits in.

MS. HARRINGTON: Deniable, non deniable, does that make a difference? Is that a better distinction, yes, no?

MR. BOLIN: John probably knows better than I do.

MR. GOODMAN: One of the problems is the distinction varies from state to state, and the definition deniable, non deniable, just so we all know what we're talking about, is a charge quote, unquote, deniable if the telephone company is allowed to turn off a customer's local service for failure to pay. Non deniable is you're not allowed to turn off the service.

A normal consumer might think the term meant the

exact opposite, so I would urge anyone not to write these terms into the rules.

MS. HARRINGTON: Understood, but what you're saying is it's not desirable because there's a lack of uniformity, if there were. Is that why --

MR. GOODMAN: I'm saying one reason is there is not uniformity.

MS. HARRINGTON: Are there other reasons.

MR. GOODMAN: I don't think that should be a distinction because a consumer feels as cheated and defrauded if he's crammed with a quote, unquote, deniable charge than he is to be crammed with a non deniable charge, so I don't think you are doing any good for the consumer by drawing that kind of line.

MS. HARRINGTON: I'm eager to get us to the definition of billing error which is what we're going to discuss for the remaining 32 minutes, but I want to finish up on this with Jill's comments and then Gary's, please.

MS. SANFORD: Two very short points; one dealing with the issue of which entities this rule should apply to. Quite frankly when the Attorneys General reviewed the documents in preparation for this rulemaking, we didn't even fathom that there was a distinction between the incumbent Bell Companies and other competing

carriers.

It had been our impression that the Pay-Per-Call Rule as it currently exists applied to everyone, and any modification would yet follow to apply to all of the industry players, and it wasn't until we reviewed some of the comments that were submitted were we even alerted to this issue, and the AGs would continue to advocate that they will apply evenly across all of the industry players.

The second issue dealing with the types of services, I think I'm just going to reiterate some points that have already been made, words of caution about using out-of-date terms or inconsistent terms. I sat through a number of rulemakings now representing the National Association of Attorneys General and have heard in rulemakings both here and at the FCC all kinds of industry terms bantered around and oftentimes in an inconsistent manner.

So I think we would caution the Federal Trade Commission from relying on too narrow definitions.

MS. HARRINGTON: Thank you. Gary?

MR. PASSAN: Two quick points. One deniable, non deniable actually has a lot of merit to it because it distinguishes those services that could be terminated fully which your phone service is not going to be

available to you. That carries an immense weight I believe in the mind of the consumer.

Non deniable means that you won't lose your phone service if you don't pay your bill which carries a different weight, and I think that distinction -- I understand why the LECs don't like that particular demarkation line because they would like to put their enhanced services in the part that says, If you don't pay the bill we'll shut off the services, but they like the third-party's enhanced services to be on the thing that says, If you don't pay, then we won't shut off your bill, and I think it's important that that be consistently applied.

My second point very briefly is consistency of the dispute rule, it seems to me that if we allow for many, many, many different levels to exist, then we allow for many different kinds of dispute processes to exist, and therefore all we do is confuse the consumers even more.

So to me I think it should be a very bright line, and it should be very fundamental, You either lose your phone service or you don't if you don't pay this bill.

MS. HARRINGTON: Mark?

MR. FARRELL: I would like to correct what the

last speaker would say, that it's deniable for enhanced services, and if you don't pay you're going to lose your telephone service, and that's not correct.

MR. PASSAN: But you would like to.

MS. HARRINGTON: There is a discussion time of 4:15 to 5:15 about the relationship between LECs and vendors.

Adam, a question or a suggestion?

MR. COHN: Before we go on to the next topic, I would like to hear as succinctly as possible just what people -- how people think we should define this term local or interexchange service or how it should be defined, and we've heard deniable, non deniable.

We've heard some other things. I know AT&T mentioned any telecommunication charge, but can people sort of briefly explain what their opinions are and why they feel that's the way to define it? Does anyone have anything to say.

MS. HARRINGTON: John?

MR. GOODMAN: These are terms that are commonly used under the Communication Act. They are not quite terms that are in the act and defined, but there is a -- they were in the Communication Act. That is telephone exchange service which is not quite exchange telephone service, but I think everybody understands that it means

local phone service, service in a telephone exchange. Interexchange is between two telephone exchanges.

As I said these are terms that are -- have been used for 60 years in the telephone regulatory business. I don't think there's any mystery as to what those terms

putting your post-it down because you didn't want to talk.

MR. BOLIN: Briefly to add to Mr. Goodman, fairly workable if you want to only include wire line service or exclude wire line service. Whether to include wireless services, you need to go to the definition of telecommunications in the act, electrons from one point without changing a content or format.

MS. HARRINGTON: Albe?

MR. ANGEL: Just trying to provide a record cite here to the Federal Communications Truth-in-Billing first order, they treat deniable and non deniable charges in their rule at section 64,201 subsection C.

MS. HARRINGTON: Thanks, Albe. Now, we're on to the definition of billing error.

The proposed rule includes billing errors that some might characterize as inquiries rather than full-fledged disputes. For example, in the proposed rule the billing error 2 covers a situation where a consumers asks for additional clarification.

Should this or other billing errors be deleted in favor of a separate rule requirement that billing entities provide additional clarification to customers who call to ask for it. Jill?

MS. SANFORD: Thank you. Jill Sanford of the

New York Attorney General's Office. I have a question for the FTC staff. The billing error discussion talks about blockable and non blockable services, and depending whether a service is blockable is a criteria for the billing error which then can be a trigger for the dispute resolution.

For point of clarity, what type of services are you talking about when you mean blockable? Is that only LEC blocking 900 numbers? Are there other blocking options available? It seems that that's a crucial component here because it serves as such a trigger in this whole process.

MS. HARRINGTON: I think that we mean TDDRA blocking. Does that help?

MR. BRENNAN: Make I make a distinction?

MS. HARRINGTON: Let me just check with Jill. Does that 900 number TDDRA blocking I believe --

MS. SANFORD: So it is limited because we made the point in our comments of, How does a consumer even become aware as we move forward as to what services are blockable, if in fact there's other blocking options, and it just seems like a crucial glue to this whole process.

MS. HARRINGTON: It's a good point. Have we been responsive, Jill?

MS. SANFORD: I think if the answer is --

MS. HARRINGTON: The answer is what we meant here is TDDRA blocking.

MS. SANFORD: TDDRA 900 number blocking, then to follow up, I think that the Attorneys General have a real concern of limiting it to TDDRA 900 number blocking because what if moving forward there are other blocking options that the consumer is not aware of and then a consumer is charged for those services but is not able to submit a billing error and has availed himself or herself of the dispute resolution process?

Are we saying here that moving forward 900 number blocking is the only blocking available, therefore -- I don't think we can say that.

MS. HARRINGTON: Adam?

MR. COHN: I understand what you're saying. I don't think it's preventing any type of blocking that anyone wants to implement. It's just that the only type of blocking under the proposal recognizes you as following under a specific category of services that would be blocked by TDDRA block so you could put in the former block if you wanted to but the only thing in the proposal that it contains is typical.

MS. SANFORD: But then technological advances that create other forms of blocking, how could the

consumers even know about the saleability of the blocking to assert a billing error?

MR. HILE: Consumers knowledge of blocking option has little to do with whether it's disputable or not.

MS. HARRINGTON: And this --

MS. SANFORD: To assert a billing error though in reading this, one of the three types of billing errors not blockable and not authorized by the consumer to be billed, if the consumer challenges something and then is told, Well, you could have blocked it.

MR. COHN: It's not blockable by a TDDRA block.

MR. HILE: The proposed rule rises in the TDDRA block so anything that's not blockable under the TDDRA mandate would be disputable so a consumer would have a broader range of protection.

MS. SANFORD: So you're limiting it to 900

MR. BARTEL: I wanted a clarification on that. Does that mean that code, TDDRA has an exception in there that if the FCC were to allow other codes other than 900 to be used for interstate pay-per-call without presubscription agreements, that would fall within the scope of interstate pay-per-call.

MS. HARRINGTON: I'm going to cut this discussion, this particular discussion off if you don't -- whether you mind or not actually, because it's strained on what we really need to focus on for purposes of development of record here.

So what I would like to get us back to is whether the billing error definition, the question on the table is should the billing error definition be deleted in favor of a separate rule requirement, that is the billing error definition that deals with inquires rather than complaints necessarily.

Should that be deleted in favor of a separate rule requirement that billing entities provide additional clarification if consumers who call to ask for it.

Does anyone -- do the people that have their little post-its up wish to comment on that question? Albert?

MR. ANGEL: Albert Angel, Billing Reform Task

Force, we would be supportive of that. We think that clarification is distinctive from billing errors and that would be an enhancement to the rule.

MS. HARRINGTON: John?

MR. GOODMAN: I agree.

MS. HARRINGTON: Anyone else on this point?

MR. PASSAN: Gary Passan, TSIA. We agree also.

MS. GRANT: Susan Grant, National Consumers League. I'm just not sure how that will work. I can imagine lots of situations where consumers would call initially inquiring about something that then turns into a dispute, and I don't know if you would then count that one call as being a dispute or because it started with

We would then track that and process that transaction appropriately.

MS. HARRINGTON: Adam?

MR. COHN: So assuming that we had some proposal that removed this from the definition of billing error and make some sort of provision for inquiries, would you think that there would need to be a requirement that would send the consumer back into the dispute resolution if they asked a question and were not satisfied? It sounds like National Consumers League felt that that was important, but how would you feel about a requirement like that?

MR. PASSAN: I think it's in the purview of the consumer to decide whether it's a dispute or not, and I think what the customer service departments reasonably need to do is try to identify whether or not there's truly a dispute or is it simply just a transfer of information.

It could very well be another person in the house made the phone call, and then when it gets into question, the information is provided to the person and it says, Well, did you look at the time of the call, yes, it was Tuesday at five o'clock, was anybody home, yeah, my husband was home, why don't you check with him and if he didn't make the phone call call us back and

we'll handle it as a dispute and see what can be done.

I think we do it every day, whether it's a regular telephone call question, credit card or a TDDRA question.

MS. HARRINGTON: Gary, I think you have moved us right into one of the questions on page 4 that we were going to take up in the next period, but we're going to take it up right now, and that is under the topic, written responses to oral complaints by consumers.

First question: "Is there a need for a written acknowledgment that a dispute has been initiated as we proposed in 308.20(c)(1), or is oral acknowledgment sufficient? Are there alternatives such as providing consumers with a dispute reference number?

Discussion on that point, please? Jill?

MS. SANFORD: Yes. Jill Sanford from the New York Attorney Generals office. In the National Association of Attorneys General comments we supported the Federal Trade Commission's proposal of a written acknowledgment.

Our experience with consumer requests -- and by the time a consumer files a complaint with our office, they're pretty angry at having been intentionally passed around by a number of different entities, and a theme in a number of the complaints has been, I spoke to someone,

the billing agent, they said it was going to be taken care of; the next month I had another charge; I called back, there was no record of my complaint; this time I called the vendor who had no record of the complaint.

We feel that the system needs to be formalized and at a minimum giving the consumer a written acknowledgment of the complaint gives the consumer a reference as to who they spoke with. I think the idea of even a complaint number is a good idea, but a more formalized system I think would help resolve things sooner.

MS. HARRINGTON: Gary?

MR. PASSAN: I think we're in almost 100 percent agreement. the only difference I think we would apply is I think it ought to be the consumers' choice whether he wants something or not and he should be empowered to say, Send it to me in writing and any of the billing entities ought to do that at that particular point in time.

If the consumers don't want it in writing, if he has resolution, I think it increases cost with no benefit to anybody at that point in time.

MS. HARRINGTON: John.

MR. GOODMAN: I don't think there's any need in the normal course to send a letter back to everyone that

calls up the telephone company with a question or a complaint. It does add to cost. If the customer says, I want it in writing, sure, we'll give them a letter, but to create more paper and more cost strikes us as a bad idea.

And as far as I can tell there hasn't been any need for that. There hasn't been any problem with the customers having ultimately failed to get the right result because of the absence of a letter going back.

MS. HARRINGTON: Allen, follow up question?

MR. HILE: Follow up for Gary and John. Should the rule specifically require that the person handling this complaint to say, Do you want this in writing so the consumer knows he can have it in writing, or do you leave it up to the consumer to ask for it?

MS. HARRINGTON: John?

MR. GOODMAN: I think you know what I'm going to say. I don't think there ought to be any requirement in

MS. HARRINGTON: I'm looking at our credit card experts who are saying that there is a requirement that there has to be a written response to the dispute.

MR. STEPHEN COHEN: If it can be resolved within 30 days, then you don't have to sign a writing.

MS. HARRINGTON: If it about can be resolved -- from the FTC staff and audience, if it can be resolved within 30 days there doesn't have to be a writing. Okay. Was that question for Gary also?

MR. PASSAN: Short form, I think collectively there's hundreds of thousands of inquiries and conversations with consumers done collectively around this table per year, and meanwhile there's been a number of complaints and in some areas like cramming it still seems to me that the consumer -- I think it's reasonable to believe that they're smart enough to get it in writing.

They call back a second time. If they didn't get it, I don't think that I would make it a requirement.

MS. HARRINGTON: Susan and Cynthia, please.

MS. GRANT: I'm confused between disputes and inquiries, something would be considered an inquiry if it was a question that could be answered right away. A person was happy even with that first phone call, then

they got the answer to their question and that was it, and it just can be considered an inquiry and doesn't trigger having to send them any kind of confirmation of dispute.

But if it's something that's going to be looked into, then it seems to me as though at least at that point it's a dispute, and I think it's really important for people to have a record of having done that, especially since there's a time limit for making disputes and because of the difficulty that they have calling back sometimes.

And I don't really think that we can place the burden on consumers to have to ask to get written confirmation that they've made a dispute. I think that is shifting the burden too are.

MR. PASSAN: May I respond to that quickly? My reading of that is what they're talking about is the initial writings that a dispute has been started. There is a different paragraph 3 down here that says no matter what happens, you're going to get a written response as to what happened, and to that point I agree with you 100 percent;.

I think the real question is we told you on the phone we're going to look at you and now do we need to send you a letter and tell you we're going to look at it

and then send you a letter three days later?

It seems a bit redundant.

MS. GRANT: I disagree.

MS. HARRINGTON: We have an agreement to disagree. Cynthia and then Mark.

MS. MILLER: Our assessment of this continues to evolve. As I said we're in the middle of our own rulemaking, but generally it has seemed to us that there is benefit to having something in writing going to the consumer. It gives them something to know that something has been initiated on it, and it's kind of like the good guy bad guy.

You think about the good guy and they're saying, Why do you need that extra cost, but they would have something in hand. They would probably have a complaint number on it. I know in a credit card dispute I had, I did get something in writing, and it was reassuring, and I knew that something was going on.

MS. HARRINGTON: Mark, Albe, and then we may take our stretch.

MR. FARRELL: Mark Farrell with SBC Communications. I would like to sort of echo John Goodman of Bell Atlantic's comments that we try to resolve customer complaints or billing questions on the telephone call, and we -- I don't think that there

should be a requirement that there be a writing.

What happens is a customer will call up and say, I've got a question about that bill, and they'll say, I didn't make that call. And we'll say, Have you talked to that carrier to get that charge off, and they may say, Yeah or I can't reach them, and we'll say, Well, you're saying you didn't make that call, and they'll say, Yes.

We want to resolve it right then and there, and we want to resolve it right then and there. We'll take that charge off so the policy of the SBC is where a customer is telling us that they have not made that call or didn't authorize that service is to take that off.

To have a requirement to acknowledge that in writing imposes a lot of expense on the telephone company. You've got service reps after every call then have to sit down and write a letter. That's a tremendous cost, and I think that you'll find that consumers feel that the system works best for them working again orally.

We set up a writing process where we send a letter to them, and then they have to send something back in writing and within 60 days, you're sort of replacing something that can be done over the telephone through a letter, and I think most consumers won't find

that convenient.

MS. HARRINGTON: Marianne has a follow up question.

MS. SCHWANKE: Well, we've discussed whether or not a writing should be required or is necessary, but how about something less than a writing but something? Like Jill suggested a consumer often calls. Then if they don't get an immediate response, then they call back, and there's no record of the complaint.

Is there something short of a letter, short of a writing that could substitute as a way for a consumer to keep track of and follow a particular complaint like a

system where the consumer sends in a dispute. What it is, it's a kind of a signed reference number underneath the credit card system, and within 30 days if there isn't a response, then there must be a letter out that says, We don't have a response for you.

That I think has kind of optimized the cost. It doesn't put out a lot of letters people don't need, but it definitely puts out a letter within 30 days to every single person so they know that either the issue has been resolved or it's still in the process of being resolved.

So if you would like a suggestion, I think that's one that we've seen work in millions of transactions.

MS. HARRINGTON: Any other comments in response to Marianne's question?

MR. GOODMAN: Follow up on that point. I think, yes, if a consumer writes a letter, to begin with the consumer ought to get a letter in return with a reference number and the whole nine yards, but if a consumer has chosen to call us even knowing of course that they have a right to write us, it suggests that that is how the customer wants to handle the

thing now. Has it been necessary up until now? As far as anybody inside the industry can tell is that is it possible? Probably.

MS. HARRINGTON: Okay. Albe?

MR. ANGEL: This is an issue that's been kicking around for years, and what it really is symptomatic of is the breakdown of hand to hand coordination between the service bureaus and LECs.

Now, I think the problem starts because of consumers' misunderstanding of what's being accomplished when they interact with a local exchange carrier who's billing for a service provider, and this is where the term forgiveness comes in and a misnomer because all that the LEC is accomplishing in that context is it's making an adjustment, taking it off of the telephone bill, but preserving the rights of the service provider to then initiate an investigation, and this has really been dodging us for years and years and years.

The Billing Reform Task Force is in favor of expedited handling through oral mechanisms, and we think that the dispute tracking numbers is an enhancement to that, but in order to really bring it to fruition, it's going to require perhaps a centralized database where those disputes can be logged and then a service provider who's following on are at least has a history of that.

I don't know that it would be beneficial or cost effective to put all of this in the writing context. It would just tend to slow down a process and then resolve result in more economic injury down the line.

MS. HARRINGTON: We're going to hear from Peter, Tony, Susan, and then we're going to take a break.

MR. BRENNAN: Peter Brennan, Tele-publishing. Marianne, about your question, it's a lot easier to handle on the phone, and what we generally do is we use as a tracking number if you will for inquiries and other complaints that we get the telephone number because all roads lead to Rome, and that seems to be the best identifier.

And it may shock the participants, I'm going to agree with the gentleman from SBC on this, that it's certainly much easier to handle these on the phone and much better for the consumer.

Many types we'll have contact with the

notification. What usually happens is the LEC forgives or adjusts the bill, but the service provider comes back looking for the money, and it would be extremely helpful to have some kind of reference.

We discussed this with the LEC. They made the adjustment. What it comes down to is timeliness of the payment and the whole issue of who's responsible. There is no paper trail, no audit records, so some kind of notification would be absolutely helpful.

MS. HARRINGTON: Susan?

MS. GRANT: I don't really understand what the problem is in getting a letter out to consumers. It's not as if this line person in customer service has to leave their post and go sit down at a typewriter and type a letter and send it to them.

We have what probably is a pretty primitive call center by most of your standards, but when our counselors are talking to consumers, a letter automatically goes out through our system to them that acknowledges the phone call and that we've taken the information, what will happen with it and so on, and I think that is important and I think it's reassuring for people.

So I don't really understand what the burden is. I'm all in favor of handling people's disputes over

the phone, but I think it is important to give them some confirmation, especially if there is the possibility that the issue is going to be raised again by the vendor.

And when credit card companies accept disputes from their company -- consumers they very often issue a provisional credit. I've been in that situation myself. But in the letter you get it says that these charges may appear back on your bill if in fact the merchant insists they were legitimate.

So in that case I think it's very important the consumer receive some communication.

MS. HARRINGTON: Thank you. Now we are going to take a five minute leg break, only five minutes so that puts us back in here at 12:52. Thank you.

(Pause in the proceedings.)

MS. HARRINGTON: We are now on to the rebuttable if the validity of ANI, the proposed footnote 34. Then we are going -- and then we are going to move into a discussion of the industry database. Handout C, that the participants have received and is available or if you need to refresh your recollection while we're discussing this about the footnote matter.

Let's start right off with the first question: How should the rule fairly balance the interest of

consumers who have been charged for calls that were not made using the consumers's telephone, against the interests of vendors who are the victims of consumer fraud?

(Discussion off the record.)

MR. ANGEL: All right. The Billing Reform Task Force is going to pass out a supplement to handout C. Is this a good time to do that now?

MS. HARRINGTON: It sure is.

that if a billing entity relies on this presumption in responding to a billing error notice, it shall also provide the consumer with the opportunity to rebut this presumption with a declaration signed under penalty of perjury.

So the Attorneys General felt giving the consumer an opportunity to come forward and rebut the presumption with a declaration was a way to deal with what we think is a very difficult issue.

MS. HARRINGTON: Thank you, Jill. Susan? Is that a leftover?

MS. GRANT: I'm sorry.

MS. HARRINGTON: Gary?

MR. PASSAN: I think the TCIA looks at the issue at a very high level. If you look at the billions of transactions that are created annually on telephones and are billed long distance, that are billed local, that are billed in all a number of ways to presume that an ANI record created by an independent third-party is not a valid business record just simply on a signature of a consumer seems to be putting more weight on a piece of paper signed by a consumer than the billions and billions of dollars and billions and billions of transactions that are out there.

MS. HARRINGTON: Does the penalty of perjury

change that calculus for you?

MR. PASSAN: It certainly improves it. I am not sure how many of the average consumers understand what perjury means, and if we guess -- I guess we would after the last year or two, and I'm a democrat, I don't know -- I'm not sure that there's an economic model that would have us going out after those consumers and being able to win the battle against a consumer just because we were able to prove that their husband made a phone

Kodak moment so to speak about $400,000 in charge backs ranging -- none of them -- we took out everything under $50 and in some cases $9,000 in a given month by about 3,000 consumers, the vast majority of which denied all knowledge.

And we don't have any information, any reason to suspect that perjury or the threat of them making a denial with the threat of perjury was compelling to them.

I think dishonest people are dishonest people, and that needs to be recognized, and we think it's very important that we continue to be presumed as valid just based on the evidence. We have no compelling evidence to the contrary, and we wonder that if it is not and if the declaration is to be put into effect, what thoughts the Commission has and how far the Commission is willing to go to see that that allegation of perjury against a consumer who misuses it will in fact somehow be enforced.

MS. HARRINGTON: Let's just say for the purposes of discussion, I would like the following assumption to operate, that ANI based billing does occur for transactions where no calls were made by the consumer or by the consumer's line. Just take that as given for the purposes of this discussion.

Then what should happen? Let's flip this. How does the consumer prove the negative?

MR. BRENNAN: I think fraud is fraud, and it is the case that someone had put a fraudulent record on a bill, that it ought to be treated as such.

MS. HARRINGTON: John?

MR. GOODMAN: I would like to agree. Fraud is fraud, and I think -- with all the people here whose job it is to put frauds in jail ought to do that, and the way to do that is to go after the bad guys and in our opinion it is not to set up a regulatory scheme with a bunch of rules and presumptions, counter presumptions, rules, counter affidavits.

If there are people out there who are doctoring their records which I take it is what you're saying, then they are committing fraud probably under state law, federal law, all types of other things and they ought most suffer the penalty of those laws, and we shouldn't try as a matter of public policy to -- well, to prevent that.

And by regulating telephone bills and decide that and having databases it seems the wrong way of going about it.

MS. HARRINGTON: Rick and then Albe?

MR. MOSES: Well, I've heard discussion of

people saying fraud is fraud. Well, that may be true, but it's very difficult for a consumer to sit there and rebut any indication that that call has not been made when some call records have been fabricated. We have seen this on some bills, and we've gone back to the LECs to have records pulled but it never existed or it was in another dialing pattern that doesn't match up.

MR. BRENNAN: What did you do?

MR. MOSES: Turned it over to the Attorney Generals office, but here is the problem. Why should every consumer that has a problem go through the attorney general? They don't have the staff the same that we don't have the staff to investigate every single one of them.

They should be protected from this happening. Now what I'm about to say I'll probably get thrown out of this room, but it's my opinion, not the Florida Commission's opinion, but instead of putting our comments -- when we filed with the FTC, we said that we thought there ought to be a billing block option.

Since that time we've kind of come up with the idea that there should be the reverse of that. Everybody's telephone bills should not be their called number -- excuse me. Their telephone bill should not end up being their VISA bill, so what we're saying is

give them the ability to have everything blocked. Every consumer in the state of Florida or in the nation should automatically be blocked from third-party billing unless they select the option that they want third-party billing, and if they want third-party billing they can select that billing.

MR. BRENNAN: May I respond?

MS. HARRINGTON: Just one second. We're going to have Albe.

MR. ANGEL: Albert Angel, Billing Reform Task Force. With regard to the last point that Mr. Moses made with regard to opt in for enhanced services, pay-per-call services, that's already been squarely decided by the Federal Communications Commission case involving South Carolina, and it is the nation's policy to allow open and unrestricted access to information service and an opt in process has been specifically struck down.

Now, going to the underlying issue, I would like to take a pragmatic approach. We've been asked to accept as the assumption cramming and --

MS. HARRINGTON: I'm asking you to accept as the assumption that ANI based billing can occur where no call has been placed from the consumer's line by the consumer.

MR. ANGEL: Fine. Would you want to refer to that as phantom billing or cramming?

MS. HARRINGTON: Just those facts. I'm not even going to characterize them.

MR. ANGEL: Let's just say phantom billing because that's the context.

MS. HARRINGTON: For example there can be hacking. There can be crossed wires. We've seen lots of different situations that in fact occur.

MR. ANGEL: Precisely. With regard to that issue, if it falls into the category of cramming, we've heard testimony at this table and there was a lot of already prefiled testimony from CERB and others with regard to proactive efforts of the LECs who identify bad actors in that context, and supposedly complaints have come way down.

If you actually look at the dollar values involved in terms of vendor fraud as compared with consumer fraud, it's grossly disproportionate on the consumer fraud side. We're talking two, three years ago it was estimated at 200 million.

Now, some of the proposals might balloon that even further, and this is at the same time that phantom billing cramming or non ANI ends up on the bill type of billing is diminishing, so if you're just looking at the

economic benefits to society, the outcome would be clearly in favor of having a situation where consumer fraud is diminished and bad actors are the subject of enforcement actions.

I think the local exchange carriers have through their billing contracts attempted to weed out the bad actors, and with additional enforcement activity, we're getting a lot better at identifying bills that should not have been rendered in the first place.

And that's where those CERB guidelines that the FCC has temporarily adopted in the Federal Trade Commission has noticed have come in play.

MS. HARRINGTON: A follow up question from Marianne and then we'll go to Peter here we go.

MS. HARRINGTON: That still doesn't answer the question as to what a consumer should do if they get a bill based on ANI when nobody was home at that particular time. How do they dispute that if there is an ANI record and it's not correct because for some reason? What are they doing in that case?

MR. ANGEL: The Billing Reform Task Force responded to that very specifically. We identified three or four categories that we felt the consumer had a legitimate point to make, and they were instances where they could present documentary evidence of having been

away or having a local exchange carrier verify that there was cross wires put on fraud or a police report indicating that there had been a break-in during the period of time.

But that takes into account the far infrequent number of circumstances that arises as opposed to the every day occurrence that results in $200 million of service debt fraud.

MS. HARRINGTON: Peter?

MR. BRENNAN: The presumption that you've laid out is probably the direct result of some of the 800 redirect issues that had been discussed earlier in the industry because there had been a court action that we had fought, and I also don't mean to minimize the concerns of consumers who have been broken into, who have had their phones subjected, who for one reason or another are the victims, as are we, of this kind of unfair, unscrupulous abuse.

But there is also a great deal of abuse that effects us, and by any measure, by measure of dollars and cents, by measure of amount of transactions, this by far outweighs the kind of abuse that you are talking to. It exists everywhere.

What about the subscriber here of 941-383-8605 who charged back $1,800, or 813-977-8646, $1,302.15 in

the course of one month? This is real abuse, abuse that is not only borne by us, but it is borne by the rest of the consumers that end up paying for this too.

So I certainly don't mean to minimize the concern, but as a matter of fairness and logic, I think it's important that this portion be recognized.

(Discussion off the record.)

MS. GRANT: Eileen, I never got to go.

MS. HARRINGTON: Wait a minute. We're going to pick up the discussion we were having with Susan , Jacque, Richard, and then we're going into the discussion about handout C and the possibility of an industry database and its utility. HELP.

So, Susan?

MS. GRANT: Susan Grant, National Consumers League. We know that phantom billing happens and consumers have to have a way of rebutting it, especially since we're talking about having a billing notice that would go out to them saying in part that the vendor would have the right to pursue the charges if the dispute wasn't resolved and the vendor felt that they were legitimate.

Consumers are not going to be in a position to know how the phantom billing occurred. They're not going to be able to hire a private investigator. I

don't think the phone company will be anxious to investigate each and every one of these situations, and the police certainly are not going to be interested in having people come to file records, unless we're going to make this a crime.

Maybe we should, but it seems to me that the proposal for an affidavit is a modest one. I think that it would probably screen out a lot of consumers who might casually try to abuse the system but wouldn't go quite that far, and for the ones that are really bad actors, I think they can be and should be blocked by the vendors from future ability to get their services, and I know that we're going to be getting into blocking but I think that's the obvious solution.

MS. HARRINGTON: Okay. Thank you. Jacque?

MS. MITCHELL: Actually mine is a clarification for Rick of Florida with regard to his comments, if you want to hold me last before Exhibit C, that would be fine, if somebody else had a comment on what we're talking about.

MS. HARRINGTON: Thank you, Jacque. Richard?

MR. BARTEL: Yes. I just wanted to bring to the attention of the participants that there's another form of fraud that's emerging that I've just became aware of and that is the phone companies should be aware of. I

found this in a magazine called 2600.COM and that's that ANI can easily be switched, meaning ANI can be factious or somebody else's ANI can be inserted and the method is by use of hacking of the SS7 matter to switch itself so that may be another area that may create some billing issues in the future.

MS. HARRINGTON: That old SS7 problem. I knew it would come back. Peter?

MR. BRENNAN: Just response to the last two. Yes, hacking into the SS7 network is something that every consumer knows how to do. It's very easily done.

MS. HARRINGTON: Are you being facetious or serious?

MR. BRENNAN: I'm sorry, I'm being facetious.

MS. HARRINGTON: Let the record reflect we have a wisenheimer.

MR. BRENNAN: Please Italicize my remark. On the other thing, the substantive point that Susan Grant raises, in many cases, yes, we do block abuse and that is a large part of the solution, and I think that the widespread acceptance of that practice by the industry has certainly helped, but that's like saying essentially that your first information cannot be something that can is not something that you can sell, and that's like saying the first one is on the house.

And if we wanted to offer a service and market a service in such a way that the first one would be on the house, we might do something like have ten minutes free at the beginning of the call, but I don't think we're allowed to do that anymore, are we?

So it's a workable solution. It happens eventually that they do it, but it's not fair to expect the industry to be giving away our service.

MS. GRANT: You could do it free as long as there's a signal that tells people when it ends.

MS. HARRINGTON: Jacque, let's get to you. I'm sorry, Gary, and Albe. Gary and then Albe.

MR. PASSAN: I'll just jump in with a couple quick ones. If it's the case that the consumer should be able to trunk a certain class of records, and I think we all agree that there is some possibilities that in fact they are right once in awhile on those issues, then I think that the FTC's proposal to have a document signed under perjury I think is very good.

The only I think I would suggest is to raise the bar even higher, and that is to place some sort of civil or financial penalty associated with that I think.

With all due respect, there's a lot of lawyers in this room, some folks that understand perjury in a lot more detail than others, whether it could be brought

to bear against a consumer I think it would be difficult.

The other thing I would suggest is earlier persons comments that if that is going to be implemented and it seems like there is value in that, then I think there needs to be some -- as I said I don't understand the issue taken to task on that, and I don't know how to -- I guess I don't understand the issue of perjury well enough to know that we would do on that from an industry perspective.

MS. HARRINGTON: Albe?

MR. ANGEL: With regard to the situation where a consumer is bewildered and sees a bill that they don't understand and they question it, I wanted to highlight two industry infrastructure issues that minimize the concern you're identifying.

First, in an instance where a person is disputing a 900 charge, more often than not the LECs procedure is to adjust that charge, and the industry by and large, and I think this can be statistically supported, does not pursue one time adjustments.

Secondly, for the Bell Operating Company or independent telephone company who's actually administering the billing on behalf of a service provider, the old adage where there's smoke, there's

fire. You can readily identify someone who is phantom billing because it's associated with a particular provider, and all of the consumer complaints are making the same allegation, and that will lead to a quick termination of that particular provider.

MS. HARRINGTON: Jacque, for the last word here.

MS. MITCHELL: The question is a verification point for Rick and his comment, and I'm going to bring it up 30,000 feet. The comment that he made whether it was a personal position or the Florida PC position, that his comment with regard to blocking all third-parties, I would just point out that it would be important for the states as well as the FTC to not become overly burdensome in the rulemaking in that in the event the third-party blocking is implemented, and I will assume unless you correct me that you're talking about all third-parties, that that would be casual dialing 10-10, that could be zero plus, operator or any third-party kind of arrangement which could leave your child in the middle of the road somewhere in the middle of the night which I'm sure you wouldn't like.

But that's a very burdensome for the industry, not to mention the anti competitive positioning that could be created in that world for the local exchange

carrier who would have total control over that end user, not because they want to necessarily but because it's going to be handed to them, and we will not have an opportunity to work with our user or our client.

The LEC will have full opportunity to be able to sell their own services which are in competition to the service providers that we provide billing for today, whether it's voice mail or whether it's caller ID blocks or any of those things, so just to clarify caution that that doesn't become too burdensome.

MS. HARRINGTON: Let's shift gears and talk about the possibility of an industry database and how it might or might not address some of the issues that we've been talking about.

We would like to have a relatively short discussion of this possibility, that is, let's go for about 20 minutes and see where we are and also invite and permit supplemental comment to address the questions that we have raised on our handout C, but let's get into it.

How would consumers -- if we did a database how might consumers be identified? Would they be identified by telephone numbers, names and addresses, any other thoughts or just on a database generally?

Gary?

MR. PASSAN: Now you are in an area that I know something about after having talked all day.

We've looked at this in the industry a lot of times. In fact there is a somewhat analogous database in the credit card business operated by a third-party shared global, and that database contains negative and positive information about consumers and usage of credit card based audiotext transactions.

And that program has been largely successful at managing charge back rates and minimizing the -- minimizing the confusion that is out there.

The key to it turns out not to be telephone numbers, and I think that's probably -- that's probably a little bit of a shocking statement, and the reason for that is that I think everybody thinks, Okay, well if

prohibition about a person changing their telephone number. They call up and do that or they add a second line or third line and they do whatever they feel they need to do to continue to abuse the services provided.

So for the database to be effective it must contain a billing name and address. For the industry to be effective even without a database, I think this is also part of the discussion, is that billing name and address of that consumer when there is a dispute or when there is an adjustment should be returned to the service bureau or to the vendor along with as proposed in the FTC ruling the sufficient information to identify them.

Why is that the case? That's the case so that the service bureau in business today can see who they're doing business with, because if they can see that a single person is abusing the system, they have the choice then of terminating business with that specific consumer or using third-party collection practices if that's appropriate for collecting on those specific transactions.

So we're very strong for the concept of industry database. We think that's a good thing, but even more importantly we think it's important that the current industry even without the database provide the name and address on all disputing calls. These are our customers

too that we're doing business with.

MS. HARRINGTON: Okay. Thank you. Albe?

MR. ANGEL: With regard to the issue of database, since it was not a subject that was specifically requesting comment in the most recent Federal Trade Commission request for comments, we sort of have to go back to what we were trying to lay out in 1997, and the key point is this.

To the extent that we're adopting dispute resolution procedures that are substantially similar to those that are articulated in the Fair Credit Billing Practices Act and the Truth-in-Lending Act, we're trying to liken our industry to that industry that operates in the credit card context.

And just now you heard Gary articulate why the database utilized by shared global in assisting that segment of the industry is effective, so the Billing Reform Task Force two or three years ago was really aiming to develop a real time capability of minimizing risk and identifying fraud.

So the whole concept of the database is a situation where potentially in the future we could have real time information deposited into a database that is tracking adjustments and potentially also tracking charges that are going to appear on a telephone bill.

And in that fashion, if the industry were relying on that database in order to determine based on their own individual criteria whether or not to extend service based on a set of circumstances that are individually determined by the service provider, it would be a very good thing.

It would parallel that which operates in the credit card arena today, for example, for those who had the experience of having a shopping spree and then finally getting to a merchant that says, Your card has been declined because of potential fraud and then they call back to the database and there's a verification that the person who's using the card is not a thief but instead the person on the shopping spree, then the transaction goes forward.

All we're advocating is a parallel database functionally within the telephone industry, particularly in light of the possibility of telephone-billed purchases being billed to telephone numbers.

Now, the handout that the Billing Reform Task Force has just distributed is an effort to really keep this conversation short. What we really it was we reached into the very provision that was troubling some among us, and this came out in the '97 workshop.

AT&T for example while expressing support for

the notion of a database was fearful it might be considered retaliatory reaction, so we developed some language and submitted it as proposed amendment to the Federal Trade Commission rules, and it merely says that to the extent that the industry is going to develop a shared database, they're going to follow all of the existing rules as they pertain to privacy, security and credit reporting.

And if we limit our discussion here today to just that point, in other words, at a very global level, assume that a database could exist and it would be in compliance with all the existing rules, is that good or bad, the Billing Reform Task Force would say, yes, it's good.

MS. HARRINGTON: Adam has a clarifying question.

MR. COHN: This is for the TSIA. Your proposed database you say will include BNA, but how would it work when a consumer called a number? Would there -- would it be blocked? Would they hear a recording that says, Your number is blocked because you're on this database? What would actually happen?

I assume that ANI would be the triggering recognizing factor that would get someone blocked, right? Is that --

MR. PASSAN: Yeah. This could easily turn into about a three-hour conversation, but in short form, I think the important elements is recent usage. As Albe just defined, typically what we see in abusive callers or bad actors, I'm liking that word all of a sudden, bad actors in that particular area is they do run up a lot of business relatively quickly.

MR. COHN: How would you identify --

MR. PASSAN: That would be identified by ANI. Then what we find is that -- and that business could be spread over a large number of companies, so therefore it's difficult for any single company to see, but an aggregate could be much more observable, therefore limiting the amount of abuse that continues on.

But what we find is there's a historical pattern in many of these people, that once they found out they create another telephone number, and our ability to link those things together over time being able to see behavior as a trend, would allow us to target specific individuals that laickn,r abyl

the issue of charge backs on the industry.

MS. HARRINGTON: Susan and John. John, did you want to say something or has your point been covered?

MR. GOODMAN: I was going to ask how it was going to work and I think I heard that.

MS. HARRINGTON: Great. Susan?

MS. GRANT: I was enlightened by that as well. There are similar databases, for instance, people who write bad checks. It would have to squarely fall under the credit reporting requirements because you have all kinds of issues of people being able to dispute inaccurate information.

I'm especially concerned about how you tell whether people with the same names are the same persons. For credit reporting records and for the check records, information is usually available to the people that compile those records including the social security number of the consumer, which helps in deciding whether it's this John Smith or that John Smith.

I don't know if that information would be available. I'm not sure how people would be able to dispute the information in the database if there wasn't some way of clearly identifying who they are and differentiating them between people with the same names, so I wonder if you would address that.

MR. PASSAN: First off, I think in general I think the industry is absolutely in agreement that -- and I think Albe's statement here I think is a compilation of that, is that the system has to be operated under the applicable federal and state laws which would -- and those kinds of things.

So the database would be operated in a manner I think consistent with the lessons that have been learned over the last 25 years here. I think as it relates to the key, what's the one fairly unique handle that gets matched up, I think, yes, Social Security number, driver's license number. Those are all useful, driver's license number, that should be one of the better keys in the checking database, probably more than Social Security number is.

It turns out -- my guess is that the LECs all have Social Security numbers of their particular line subscriber, if that's who we're attacking because that's the ANI, that's who owns, it, and so I think providing the Social Security number along with BNA at the time that the information is made available to the database would allow the database to act very efficiently.

Will there be some problems in it? Sure, I'm sure there are problems in all the databases that are out there today, whether it's the database for the long

distance or the checking database and so on and so forth.

I think the credit reporting agency I think resolves those issues amicably relatively quickly I think.

MS. HARRINGTON: Let's ask one of the LECs, Mark, your members?

MR. FARRELL: Mark Farrell with SBC. We haven't had time to really study this in depth, but I would like to give the following preliminary thoughts. This database seems to have shifted the focus. The focus of the rules was to protect consumers announced to protect service providers, and my thought is that this database would discourage people from contacting us about disputes.

Let's say they have a charge on the bill that, Hey, I didn't make that charge but now -- now after they dispute it, it's going to be put into some type of database, and as a LEC, I'm concerned that you're talking about Social Security number, et cetera, et cetera, and I imagine part of this database and you're saying you're going to get all this information from the LEC, the communication the customer has with us, we treat that as a private conversation.

And there are rules that govern us that in the

Federal Telecommunications Act and Congress felt it was important those conversations be treated as private conversation and there's certain exceptions to this, but it seems like this database, all of a sudden we have to turn over all this information, I think consumers would not want that.

They order service from us. They give us certain information but then to know that we're going to turn around and provide it to some third-party database that service providers only services are going to use to not sell them, I've got concerns with that.

And lastly I would point out that the recollection or the RBOCs through the billing contracts do provide data so they do know who's calling in saying they're not making those calls, and the service providers can use that data.

MS. HARRINGTON: Mark Hertzendorf has a question.

MR. HERTZENDORF: Yes, I understand from some comments made earlier that vendors are already blocking calls from specific consumers to specific information

will be in reducing charge backs?

MS. HARRINGTON: Albe?

MR. ANGEL: The answer to that question is that it's done on an ad hoc basis by many companies.

driver's license information or anything beyond name and address and telephone number.

I think -- we look at this as an ounce of prevention with a pound of cure, that this is something we need to do to -- to do our business, and frankly it's disingenuous for the company from SBC to say that they provide us with information when they don't provide us with the adequate information to do what the law allows us to do which is to chase people whom they've charged back when there's been a dispute. All we have is phone number.

MS. HARRINGTON: Just another tantalizing

in some cases 30 days after it was abandoned by a prior subscriber. There are so few phone numbers that LECs have needed to do that.

So this is really been an important step in us understanding who are consumers are so we can provide adequate customer service and frankly so we can live with our risk. Thank you.

MS. HARRINGTON: Thanks, Peter. John?

MR. GOODMAN: Just an observation.

MS. HARRINGTON: Is this a response to Mark's question?

MR. GOODMAN: It was a response in a couple things I was hearing. I don't think it was a direct response.

MS. HARRINGTON: Hold one second. Do you have anything different to say?

MR. PASSAN: No, I was going to ask --

MS. HARRINGTON: I was wondering if your response would be different than Albe's or Peter's?

MR. PASSAN: No. My response is a little more quantitative. If we take a look at the credit card companies and we look at this highly proprietary secret information, if we look at our own major service bureau in terms of what percentage of the calls we turn down because we have negative information, it's somewhere

around 35 percent of all of the 900 calls.

We've heard from that consumer before and we turn them down because we have specific recourse information from them.

Now, that -- that's kind of a scary number. It's a number that's accumulative over a lot of years, and I think it's subject to some of the problems Peter is talking about here in terms of the fact these numbers have probably been reassigned, and they try. They hear our message and they don't bother calling our 800 number to get a fix. They go someplace else so that's part of the character of having an instantaneous type product, and we probably should be doing a better job with that.

But I think it's indicative of the fact that there's a real need out here to improve upon and share the data and be allowed to share the data and the data is going to be useful.

MS. HARRINGTON: Marianne has a follow up question.

MS. SCHWANKE: I think I understand from what you have indicated and what Albe has indicated that if a consumer disputes a charge, then they're put into your personal company database.

Would that be the same tricker to put them in the industry wide database and if not, what would be the

tricker? I think we're trying to get at consumers who consistently defraud companies, but I'm concerned about the fact that somebody that disputes --

MS. HARRINGTON: If I can refine that, what consumer protection would be needed if such a database were in place? On our staff handout one of our concerns is how will accuracy of information in the database be assured, and I think that relates to Marianne's question? I think there's both an issue of whether one the other is how does the consumer receive notice, and dispute inaccurate information that provides the basis for blocking.

And Gary, we want you to answer all those questions.

MR. PASSAN: I was going to say I get to put a lot of opinions out today that normally don't exist. I think history would tell us that it's not a good idea to make the final decision in the database, but to provide in the database enough historical information that each company can -- the consumer is charged back one call.

One company may say, Fine, I don't mind giving them business, they charged back a couple, three years ago, forget that, I don't care, let's do business with them. Another company might look at some guy that charged back $9,000 last month and say, You know what, I

may offer him business but I'm going to send him to customer service, and we're going through this little process with them to see if we can determine whether this is somebody we should be doing business with.

So my recommendation is that the database shouldn't have the decision as much as it should have enough information to be useful.

MS. SCHWANKE: How would that be implemented though? If somebody calls, how would that -- automatically if search done of the database what kinds of information can be transmitted to the -- during the call itself to allow -- that doesn't sound like it needs a person, it needs someone to look at what the information is to make a decision? How would that work instantaneously when someone calls.

MR. PASSAN: We do it in a second.

MS. SCHWANKE: So someone looks to see what information is in the database and decides whether or not --

MR. PASSAN: It's a combination of humans and full automation. It turns out about 97 percent of those decisions can be made relatively straight forward with a reasonably sophisticated piece of software looking at a lot of different information and making that judgment call, and we tune that all the time.

There's 3 percent, there's enough ambiguity. It bounces to customer service, and then customer service has access to that information, and they look at it and they make a judgment call based on policies and procedures that are based in front of them.

Nothing is perfect, but it seems to work fairly well on the information that is available, and I think it really comes from getting more information is better. The more we can see consumer leads across a broader base, the better decisions are going to be based by everyone.

MS. HARRINGTON: John?

MR. GOODMAN: It may be a question on the

MS. HARRINGTON: Debbie Hagan is in the audience blanching, and I don't know if that's from the privacy statement or her own personal experience.

MR. PASSAN: The short form answer to that is it would have to be billed again consistent with the federal and state laws associated with everything from privacy to communications to how it's handled from misinformation basis and so on. I think it's the deadbeat database that's been provided by the long distance business is a classic example that it can be done.

It's a real question of do we have the authority to do it, and I think is what we're looking for here today, and do we have the cooperation to do it.

MS. HARRINGTON: One quick question. How easy is it or do you give notice over the phone to the consumer that they've been placed in the database if there's notice given? One of the -- I'm going to ask Albe to answer that.

MR. ANGEL: The answer --

MS. HARRINGTON: Because you say in your proposal that this would all be done in full compliance with existing consumer protection laws so what about notice, which would be I guess the equivalent of being denied credit because of information that's in a credit

report.

MR. ANGEL: Yes, notice would be provided, but really to give you.

MS. HARRINGTON: Over the phone?

MR. ANGEL: Let me explain it by saying lest you think we've worked out these details, we have not, and moreover the Billing Reform Task Force was well on the

limit your risk and financial losses, so that you don't need to get the address from the IXSs necessarily because the address for the LECs would be used for a lot of other purposes other than the collection n.

And secondly, maybe there should be an aging process for this database required, so that nothing stays in the database for more than six months, and it's more of a penalty for someone that keeps the same ANI, and it also protects the new subscriber to the ANI who happens to pick up a phone number from somebody who was a problem subscriber.

MS. HARRINGTON: Let's hear from Larry.

MR. GOOD: Larry Good with Electronic Commerce Association. A brief note regarding database, I think that there are -- there needs to be some protection for the consumers along those lines but that with all other attempts industry wide and also some government attempts and attempts between the United States and Europe to resolve some of these matters that fall under this category, it is probably best to stir away from that and instead to have some guidelines which suggest that along the lines of what BRTF are suggesting here there be adherence to some guidelines that exist elsewhere.

MS. HARRINGTON: Tony, you've been very patient.

MR. TANZI: Thank you. Just a quick question. If the database were built and this would be an industry wide database, this is my understanding, correct, and telephone numbers were used, would there be a mechanism for a customer to voluntarily include themselves on that list?

MR. PASSAN: You can send your ANIs directly to me if you would like?

MS. HARRINGTON: It sounds to me like a suggestion since we understand the details are not known.

MR. TANZI: And to reiterate what Richard said about the next person in the seat using that telephone number, that seems to be another chronic problem in the environment that I represent since they do turn over every six months or eight months of students having a tendency to move every three or four days to a location they like within the campus.

MS. HARRINGTON: Jacque?

MS. MITCHELL: I merely have a comment about that segment of this world that seems to be perpetrating a lot of fraud. Those people are moving in and out of or at least the clearinghouse perspective is that we're seeing them moving in and out of the regulated environment into the CLEC environment and back so

they're shifting numbers so consistently that we can't trace them so that would be a consideration for a database.

MS. HARRINGTON: Peter?

MR. BRENNAN: Thank you. I wanted to address Marianne's question which went to the issue of accurate information and consumer protection. This actually provides companies who -- companies like ours who are aggressive in -- we think we're aggressive in terms of our consumers protections. We use a very light hand in everything that we do, and our consumers who are media for the most part insist that we do, that it gives us a chance to really long and design an approach that might be different than other people and for other kinds of services.

This really is true of the next generation of the blocking options which consumers have already and the sponsor initiated blocks which carriers and others allow, so we would be able to take information. The primary focus would be that a consumer would call and would be referred not to an 800 number or an instant message, you can't get here from there, Sorry you can't get here from there to you but to an 800 number that would go to our office where we could make sure the information we have is correct and make sure and verify

that they hadn't moved, that it wasn't a new number and there wasn't a problem with the information.

So I think this is a better step toward addressing the kind of concerns that you had about limitation.

MS. HARRINGTON: Last word, Albe.

MR. ANGEL: To build on Peter's point, the whole vision with regard to this database really is to address all of these consumer concerns and at the same time build a database that's providing information to companies so they can make very reasonable decisions.

But part of the process is that there are algorithms that work that are also scoring a person's usage. If I was a heavy user of 900 services and the database was keeping track of that and knew that to be the case, that most of those charges never got disputed, but then I called a 900 number and it was a bad product and I wanted to charge it back on that reason, that service to other services would not be blocked because the person has a positive history of payment in this area.

And the one or two instances where the charge back was legitimate and justified will be overlooked, so the databases that operate in this arena on a centralized basis are very sophisticated because they

rely on algorithms. All the companies here do not have the capacity to do it individually and moreover would not make the investment unilaterally.

But by getting the clearance from the Federal Trade Commission, however you want to state it with severe reservations with regard to the following issues, would at least clear the way towards establishment of such a centralized database.

MS. HARRINGTON: Okay.

MS. GRANT: Could I just ask one question?

MS. HARRINGTON: Yeah. I'm not sure I am going to let anyone answer it.

MS. GRANT: It's Susan Grant, National Consumers League. Just a point of clarification, Albe, you're not talking about a database though that has information about all the 900 number calls that people make. You are just talking about a database that people would be put in if they had been flagged as a problem?

MR. ANGEL: I'm talking about both, both negative data and positive data and to allay concern the centralized database as I envision it to not involve a situation where the service provider is getting a customer priority information.

All they are getting is an indication whether or not this is a tolerable risk given their parameters of

risk. In other words, for example, envision the credit card model where a merchant is put on warning that there's been a lot of charges to that card or the card is no longer in-service.

It's functionality of that sort, not let's have a field day with centralized database and learn everything about a consumer that we can learn about their past experience, so on and so forth.

It will be totally with the objective of preserving the privacy and confidentiality of the consumer but at least giving the vendor an opportunity to limit risk from someone who is honest.

MS. GRANT: Then I do have tremendous concerns because we don't in fact have laws that we could even reference to say there should be guidelines following these laws to protect that information from marketing or other uses that consumers may simply not want.

I really did think that it was analogous to the check databases which I don't think contain information about every check that you write, just when bad checks are reported, and if it was limited to bad aggregators for 900 numbers or other information services, I would be much more comfortable but this just raises other concerns for me along the privacy.

MS. HARRINGTON: What we are going to do as I

said earlier is leave the record open for additional comments on these handouts that we are using today including handout C, so, folks, take a look at these and if you want to make additional comments or raise additional issues, get those in in writing by June 4, please.

Now we're going to move on. We want some discussion on this last item, the designated billing entity but it really folds nicely into the dispute resolution process and the vendor LEC relationship discussion that we're going to have. What I would like to is we had this unscheduled five minute break, and there's no such thing as a free lunch so we're only going to have a ten-minute break now and we are going to resume at 4:15.

(A brief recess was taken.)

MS. HARRINGTON: Let me make a comment for the record. We're about to embark upon a discussion that some may think has nothing to do with protecting consumers under TDDRA, but I would to everyone that first of all the TDDRA has a broader purpose and that is to ensure the integrity and vitality of pay-per-call and telephone-billed purchases.

And so while consumer protection is our principal responsibility at the FTC, we are also

concerned that we attend to the statutory purpose, and secondly one thing we know at the Federal Trade Commission perhaps better than most agencies that are engaged in consumer protection work is that competition and protecting competition is a fundamental form of consumer protection.

So both because this agency exists to promote fair methods of competition and protect the marketplace from unfair methods of competition, thus protecting the consumer's right to a variety of choice, and also because of the statutory purpose, we think that this is a highly relevant topic for consideration in this proceeding.

Now we're going to talk about vendors and LECs or I guess if Jerry Springer were here, we would talking about LECs and the vendors who don't like them very much or LECs who don't like the vendors very much either.

Let's go right to the first question. Should the rule encourage timely reporting of charge backs to vendors? If so, how can that be accomplished and if not why not?

Peter?

MR. BRENNAN: Peter Brennan, Tele-publishing. Yes.

MS. HARRINGTON: Thank you. That was a succinct

answer.

MS. HARRINGTON: Gary?

MR. PASSAN: We certainly applaud your comments, and I think that's very consistent with how we feel. This is a consumer issue. The LEC vendor relationship has a -- has a dissymmetry which I think we're all very clear about, and that is the LECs are very large. They

charge back information be disseminated in an extremely timely manner, and I think from a competitive perspective, the fact that the LEC can withhold that information and can be a competitor of third parties allows them to have a distinct competitive advantage over the third parties because they know who is paying and who isn't paying.

So it seems to me that information should be disseminated as quickly as possible, and I'll go back to my earlier point, it should be disseminated with a billing name and address so we can contact the consumer so we can resolve whatever the dispute is and non payment issue in the most timely manner possible.

MS. HARRINGTON: I would like to point out the next question too and encourage especially the LECs to jump in, why don't LEC makes BNA and TDDRA blocking information available to vendors, and Mark Hertzendorf has a question as well.

MR. HERTZENDORF: I'm wondering if any of the LECs currently preclude secondary collection by vendors after they forgive charges, and if anyone wants to approach that topic from any angle, I would be interested in hearing what you had to say.

MS. HARRINGTON: Linda?

MS. YOHE: I'm not sure which question to answer

first. We do provide billing information. It's a product tariff, interstate and intrastate tariffs. My presumption here is that for TDDRA-blocking information, that that's blocking what we have that would preclude a 900 to be dialed.

Therefore, I'm not sure what the problem is with associating that with billing name and address because otherwise they would have to dial a number besides the 900 to get to the vendor, which wouldn't allow the vendor to have -- if they have express authorization that's required, why would the vendor not have that customer's billing and their address through that process?

Because certainly TDDRA blocking is the 900 blocking at the switch which means that that call wouldn't go through that way. Therefore the customer would have had to dial it a different way of accessing that information or those services being provided by the vendor.

So I'm a little bit confused about why the vendor if they're getting authorization, express authorization, from the customer wouldn't be able to get customer name and address from that, but specifically we do have billing name and address and it's available.

MS. HARRINGTON: Let me ask a question of Albe.

Does the availability of BNA in product form meet your objective or is there something else that you're looking for here?

MR. ANGEL: The availability as a product is a beneficial thing. It's not universally available and where it is available it's expensive and sporadic and out of date.

MS. HARRINGTON: Okay. John? You're not John. Kris. I'm sorry. John's gone. Kris is back. Kris.

MR. LAVALLA: Bell Atlantic HAS also offered BNA as a product intrastate THROUGH and the FCC and further we offer a product through our care process which also provides billing NAME and address and that's available to any carrier as well as clearinghouses so it is available.

If it's an issue of price, that's a different issue. It is available and to my knowledge it's up to date. It's not stale information which should be available.

I guess I would reiterate what Linda said, we're not sure from a TDDRA perspective when we block 900 what the value of knowing that because it's a switch issue, and if I dial a number the call doesn't go through so there's no need to have that information or what would you do with the information I will get? I would pose

the question like that.

MS. HARRINGTON: I would like one of the vendors to respond to Kris's question and then Marianne has a question. Would one of the vendors, Peter, would you explain the value of TDDRA blocking information to the vendor?

MR. BRENNAN: The basis on which we believe the value of having that information is so we can understand who our consumers are. Again it's -- I don't know any more general way to put this. It's disingenuous for FTC and Bell Atlantic to suggest they provide BNA when they only provide it to carriers or people that have specific agreements with them. That information is not. It's only in the case of Bell Atlantic that information is not available to vendors.

MS. HARRINGTON: Can you hold on a second. Kris, is that true that this information is not available to vendors?

MR. LAVALLA: It's not available to service providers. It's available to our consumers whether they be carriers or clearinghouses but not --

MS. HARRINGTON: So vendors can't get BNA information from Bell Atlantic.

MR. LAVALLA: That's correct.

MS. HARRINGTON: Okay. Peter, continue.

MR. BRENNAN: I forgot what the second part of the question was.

MS. HARRINGTON: I'll come back to you, no problem. Albe and then Richard, please.

MR. ANGEL: I wanted to give a good example of part of the dynamic here and the problem. Just a moment ago we were talking about blocking, and the observation

think we should enhance that by saying, and it's a LEC's responsibility to pay for it.

MS. HARRINGTON: Richard, are you taking your post-it down?

MR. BARTEL: Yes.

MS. HARRINGTON: Gary?

MR. PASSAN: I can speak somewhat for our company, and I was conferring with another member of our association, we've spent the last probably year trying to get BNA from the LECs. I think at this point we have about 70 percent coverage, substantial set up fees, very substantial rules and regulation. We had to go out and get ourselves a CID code so we could register our --

MS. HARRINGTON: A what?

MR. PASSAN: A CID code, carrier identification --

MS. HARRINGTON: Carrier, it relates to the SS7.

MR. PASSAN: Yes, for a couple quarter million dollars we can explain all that, but we've had to jump through a lot of hoops, and I think really to go to the source of this, I think all we're really asking for is is that this ruling bring forward something that says that this information will be made available, will be made available on a timely manner to the vendors so that we can do what we need to do in terms of building a

relationship with the consumers on a quick basis.

I can tell you I've sent files off to some of these LECs and it's been six to eight weeks before I've gotten back the BNA responses. Other ones they have online systems that are very sufficient and work very, very well.

I don't believe I can go to SBC today, and if I put my 900 provider hat on, I don't think I could get a BNA relationship from you guys. I know that for a fact.

MS. HARRINGTON: Let me ask that question directly. Linda, do you make BNA information --

MS. YOHE: To carriers and clearinghouses that have a BNA relationship with us.

MS. HARRINGTON: But not to people whose only relationship is a vendor using us as a billing entity.

MS. YOHE: I believe the tariff is related to carriers.

MS. HARRINGTON: So that's a no.

MS. HARRINGTON: No. Marianne has a question.

MS. SCHWANKE: It sounds to me like Bell Atlantic and SBC provide BNA to clearinghouses, that an alternative source of BNA if the providers in the service bureaus have their contracts with the clearinghouses and the clearinghouses can get BNA. Why can't service vendors get that from a clearinghouse?

MS. MITCHELL: I'm not a contract -- Jacque Mitchell, I'm not a contract expert but I would imagine that there's some language in that contract between the clearinghouse and the local exchange carrier that would prohibit us from reselling that information using it perhaps for our own use but I would think -- I don't know that.

MS. HARRINGTON: Kris.

MR. LAVALLA: There is some restrictions in the tariff which says that the information being provided can only be used for the purpose of a billing. Whether I guess that would be a legal call whether -- you certainly wouldn't be able to resell that information or pass it down the line.

But if it was one of your consumers had requested specific information for the purposes of billing and you had it from us, that may be available. I think it would be a question to ask from a legal perspective. We wouldn't want to give you BNA information on consumers just to have you disseminate it to all your consumers.

MS. HARRINGTON: Marianne?

MS. SCHWANKE: I might just have a misunderstanding about billing collection and tariffs, but it's my understanding that billing collection is a

detariffed service and so why are you talking about tariffs in connection with billing collection agreements?

MR. LAVALLA: Kris Lavalla, Bell Atlantic, the billing name and address is actually a tariff service filed in both the intrastate and FCC, and it wasn't originally and then it was put back in the tariff and I'm not sure of all the reasons why but it is currently tariffed.

MS. YOHE: Billing name and address is not part and parcel of billing and collection services. Billing collection services is a separate product and billing name and address is a tariffed product.

MS. HARRINGTON: I want to ask a different question now and it's in the agenda. Can the rule play a role in encouraging LECs to continue billing for 900 number services?

We've heard a fair amount of comment that the LECs are not -- from the vendor community, that the LECs are not as eager and willing to bill for 900 services as they once were. Kris?

MR. LAVALLA: Kris Lavalla, Bell Atlantic. I guess I would put that in the converse. I think the rule could play a role in discouraging continued billing for 900. The more complicated it gets and the more

costly it becomes for the LECs to do the billing, they could have a disadvantage, disadvantageous effect.

MS. HARRINGTON: What is it about the current rule that makes it complicated for LECs to bill?

MR. LAVALLA: I'm not sure that in the current rule it is that complicated to bill. We've gotten past the hurdle. We have the disclaimers that were on the pages, segregated on the bill page. People understand 900, but if we get into this area of expansion of the definition and when -- what types of services these rules we have are going to apply to and start changing bill formats and a lot of other issues, it becomes increasingly more complex and costly.

significant trends, one is there's an increasing tendency on the part of LECs to write the charges off, and we've seen charge backs escalate, and there are all kinds of patterns which we've documented in our testimony we can supplement it later if you have more questions, but so there's that.

So that the actual integrity of billing and collection, when it's gone in our case from the five to six percent range of uncollectibles to the 18, 20 percent range, I think 18 is a figure that's in -- it's in the documents.

It means that the whole viability of this as a solution and to the ability to offer these services has been called into question, how many businesses of any type can operate with 20 percent bad debt, and frankly, our applications because of the nature of them being fairly low cost and various other factors have -- are lower than many other sectors of the industry, so that's one thing. The other thing --

MS. HARRINGTON: Peter, could I interject with a question? Are you saying that when the vendors have high charge back rates the LECs stop billing for them?

MR. BRENNAN: No, I'm saying --

MS. HARRINGTON: The vendor is saddled with a big bad debt?

MR. BRENNAN: Yes, in many cases we don't know until 11, 12, 13 months or later. Remember 70 percent of the charge backs, and again documented in the record, 70 percent of the charge backs come in after four months so a third of a year has passed and given the fact that phone numbers are reassigned as we've mentioned at the table already within six months, the ability to exercise our rights to collect and the ability just to plan and run a business is severely hampered by this.

MS. HARRINGTON: One of the questions in the agenda on this topic is whether the rule should do something to encourage timely reporting of charge backs from the LECs to the vendors and I guess from the clearinghouses to the vendors as well, and I would be really interested in LEC comment on this as well as vendor comment and continue with your response.

MR. BRENNAN: The other thing that's happened and perhaps it's a reflection of the LEC's ability soon to again be offering competing services in the marketplace, and a great deal of other upheaval which is going on in the marketplace for local exchange carriers, but LECs are now informing us that and informing our agents whether they will be long distance carriers or companies, other companies who handle collection events, that they will no longer honor those agreements, they'll

stop honoring them when they expire.

To put that in real terms in the case of GTE who has been public about this, GTE represents about ten percent of American consumers so in a matter of months 10 percent of American consumers will not have access to 900 services, so that's 10 percent of the market which we will no longer be able to reach.

And SBC has been very aggressive about its approach to setting specific limits -- I don't think we're given to paranoia but we think it has something to do with their own commercial considerations. USWest has taken an application area that consisted of 25 percent of the marketplace and said, We're not going to bill and collect for that anymore and go down right down the line.

In Bell Atlantic there's -- our company has had a history of rather public disputes reaching one case into the content of our newspaper saying we're not going to bill and collect for ads that say that, it was thrown out in summary judgment when we went to court on it, so there is a documented and a well known tendency on the part of the LECs to shoot this industry dead.

And for those of us who participated in the process over time it was particularly frustrating, it was something, the work we have done around this table

historically over the past 5, 6, 7 years was working and we're going to push those businesses into other corners where consumers don't have these protections.

MS. HARRINGTON: A LEC response, Linda.

MS. YOHE: I'm concerned about your paranoia but I do want to I guess clarify something for the record. Consumers, 10 percent of the customer base is not going to be denied access to 900. What you're saying is they're not going to have LEC billing which is a totally different method.

Billing and collection services are competitive services. There are plenty of billing providers out there, so I think it's misstating very much that that customer won't have access to services.

With regard to timely charge backs, when a customer calls and disputes a charge and we adjust that charge on our bill, that adjustment record goes back to the carrier of the clearinghouse, the provider who has a contract with us for billing, and we provide those adjustment reports on a daily basis, a weekly basis and a monthly basis.

And it's up to the carrier, carrier comes in and determines how often they want to seek those options so I have trouble somewhat with what is considered a timely adjustment. Certainly carriers have it within their

power to get those adjustments on a more timely basis.

Some of the concerns that I've heard tend to deal with the fact that they don't like the cost or it seems that there's this notion that these services need to be provided for free or at such -- I mean, I think there's the cost argument on the table, and all I'm suggesting is that we do provide those adjustments on a timely basis and the carriers can purchase or set up their reports to get adjustments on a daily basis.

MS. HARRINGTON: All right. Let's talk to a carrier. Jim from AT&T, can you say anything to us about the carrier's role in a timely reporting of charge backs.

MR. BOLIN: I'm a little bit at a loss because frankly I didn't come prepared to talk much about this. I can say that AT&T I guess along with Sprint is in a

entry and they're trying to advantage themselves in the market.

MS. HARRINGTON: Marianne?

MS. SCHWANKE: I have a follow up question for Linda. When you said you provide information on a timely basis to the carriers is that a different context than the pay-per-call? Would you be bringing the information directly to the clearinghouses in the pay-per-call.

MS. YOHE: If the call is adjusted, it's adjusted back to the billing entity. Whether that be a carrier or a billing clearinghouse, you may be the billing agent for a sub entity but it's adjusted back to the carrier or entity who has the contractual relationship with us.

MS. HARRINGTON: Jacque?

MS. MITCHELL: Thank you. A comment that I think will help clarify this too a bit. There is an amount of time that is involved in this process that you have to be concerned about, and that is from the date of the call, from the time that the end user may perhaps make the call for the adjustment, some two, three, four months could pass depending upon when I look at my bill, who looks at the bill. Is it my husband, is it me, is it -- who is it.

So there's a fair amount of time that could pass before -- it becomes visible. Then the call is made to either the LEC or to the service provider or to the clearinghouse who acts as the contracted billing entity, the inquiry center, if you will, that could take another -- maybe that's another four.

We receive that information. We issue the adjustment. If the call goes to the LEC perhaps, while this clearinghouse, Billing Concepts, is on a daily delivery of adjustments, that daily delivery of that adjustment could be an adjustment that was four months old.

On average across the LECs we are seeing anywhere on adjustments four to six months, receipt of that information based -- because of that situation with how hold the call is the information is pretty current, but it's old news because it's old calls that are being written off.

Let me speak before you say anything else about bad dealt. The earliest we see any bad debt across the LEC is about eight months, and it comes first from Southwestern Bell, and from there the average is about 12 months and then at that point it's -- at the final is 18 months where we see the end of this bad debt process.

So there's a very elongated time period where we

don't see information and the service providers need that. It's critical information to be able to turn end users off that you were perpetrating fraud or don't want the service.

MS. SCHWANKE: Somewhere in the written comments made the suggestion that if by contract the billing clearinghouse is the interoceptor for consumer complaints, if the rule required that in that case and if a consumer called a LEC, that LEC would be required to merely forward the call to the billing clearinghouse, would that help any of this problem?

MS. MITCHELL: Jacque Mitchell again. Let me suggest that our contracts with the LECs indicate that they are to make that referral immediately to us. We are working with one of the LECs in a warm or hot transfer where when the call comes to that center, the LEC actually sends it to us, and we're in active negotiation right now with another LEC investigating this process to see if that's a viable possibility.

We serve as that contracted party, and the LEC may receive a call from an end user who is so adamant and I don't think I'm being too strong here -- but the end user is adamant that they do want to make the next call. Hence the reason we want to do this warm transfer arrangement because we don't want that end user to have

to be troubled by having to dial another number.

We really want to make it easy for them and in the GTE case it's working beautifully. Absent that the LEC has no recourse but to say, okay, Mr. End user, that's fine, and I'll remind you from the conversation we had this morning from Mark Farrell where he reported that when that call comes in and they have to take action that they do satisfy that end user, that they make that end user happy.

And I would suggest that it is to their benefit to make that end user happy because in the future as they are available to long distance, that end user is very happy with the local exchange carrier. I hate to use the term no skin off of their back but there is no skin off their back. If the LEC can make the adjustment the adjustment gets passed to us. The clearinghouse will then pass the adjustment down to the service provider.

But let me remind you if in fact the service provider disappears, the clearinghouse eats it so it is to our best benefit or to our benefit to ensure that that whole chain works and that that information gets into the stream as quickly as possible.

MS. HARRINGTON: Let's hear from Larry and Albe and Helen and then Adam as a couple of questions.

MR. GOOD: Larry Good, Electronic Commerce Association. I want to respond to the comment that there are alternatives to 900 billing. Practically

their intentions are else where lately, whether it's the hot and sexy Internet or their desire to get into long distance or other areas, that's where the focus is.

900 services is a backwater service that is declining in significance and they've had no real importance to it on a going forward basis.

Secondly, and most troubling we see the baby getting thrown out of the bath water. There's a lot of this anxiety associated with cramming, and companies like GTEs ostensibly responding to cramming articulate the intention to stop billing for 900 all together even though a vast segment of 900 billed messages are not problematic, and I think both agencies, the Federal Trade Commission and the FCC, have documented that but in the instance of special record billing and the 4250 area or crammed messages, they're willing to forsake the entire market.

And the lady from Southwestern Bell, SBC, indicated that there are competitive alternatives. Well, that's something that the Billing Reform Task Force has specifically invested some money in to respond.

Peter earlier mentioned that we're going to be submitting into the record an economic study that we've commissioned and that study will show that there are no

competitive alternatives open to people that operate in the casual billing arena for pay-per-call service. We don't know who these people are that are calling us. The credit cards are not available to many of the people that make the calls. Where they are the charge back levels would lead to instantaneous termination of the provider as a result of the category of calls.

And it's been for years the saw of the LECs that they're competitive alternatives, you can do it yourself. Even if we wanted direct bill, we wouldn't have access to the information on the person who called us in the first place, so we're going to submit fairly persuasive economic testimony that establishes an empirical basis for the fact that there are no competitive alternatives.

And we take the position that billing is an essential facility, that the Bell Operating Companies are in possession of that by virtue of their monopoly status and in order to further the purposes of TDDRA and wide availability of information to consumers throughout the United States, they cannot block or stop billing unilaterally.

With regard to the question of timely adjustments, the real problems seem to be associated with so-called treatment where there's been a partial

payment on the bill and it gets put to the side as they pursue their own independent collection efforts, but they don't tell us that these independent collection efforts are going on.

So if it takes them six months to get some payment, then they'll take that payment for the basic segment of the businesses and then alert us to the fact that by the way those calls that were made a year ago are not going to be selected on and it comes a year after there's been some notice of the fact that the consumer is not going to pay.

So it's not that they don't give us timely information in all instances. It's just that an ever growing segment continues to be a problem.

We don't have leverage with the local exchange carriers. We're left out of the negotiating process as a whole. The information providers and the service bureaus in the 900 segment rely primarily on AT&T and MCI because they're the ones that are submitting the billing records to the LEC and they have other fish to try fry.

They're just not interested in 900 and when it comes to renegotiating billing collections agreements, they're more concerned with consumer records in toll area than they are with regard to 900, so it's an issue

that constantly gets left off in the negotiations.

And then finally, there's this dynamic where ostensibly for the right reasons the LEC tried to be the inquiry of last resort for consumers who have issues, and it's a noble purpose, but unless we really reform the process and create the right incentives, there's not going to be a situation where the person who should be handling the inquiry, the service provider or the call aggregator or the third-party billing entity should take that call in the first instance.

The notion of a warm transfer is an excellent idea, but as you're hearing this is one LEC after ten years of this industry, and what's amazing is that there are collection efforts that are undertaken by the LECs themselves for amounts that consumers have run up.

And while some of these amounts involve 900 services, the industry as a whole has yet to see one penny of return for those collections efforts. It's always yielding benefits for the regulated side of the industry and never for the enhanced side of the industry notwithstanding the fees that have been paid.

That's a mouthful but it gives you a pretty accurate understanding of what's going on.

MR. HARRINGTON: Thank you, Albe. You had some questions, Adam.

MR. COHN: I just -- this is a quick one. I was wondering if anybody had any further comment about the two portions of the proposed rule that would address the timely reporting of information from the LECs to vendors. I think there's two provisions. One is if the charge has been forgiven, and I know there's been issues raised about the term forgiven, and there's another provision about if a charge isn't disputed within a certain amount of time.

Does anyone have any further comment specifically about those two proposals?

MS. HARRINGTON: Kris and then Albe, please.

MR. LAVALLA: Kris Lavalla of Bell Atlantic. On the issue of time, I guess time sufficient to make the claim, and I think Jacque laid out the time line pretty well. Sometimes these consumers don't call for several months before they take a look at their bill and decide that they've got a problem with some of these pay-per-call services, so it's been Bell Atlantic's policy not to have a hard and fast limit that if you don't make a claim within 60 days, you're out of luck.

We would entertain claims as they come in, particularly if it's a first time where there's no history of an adjustment so we would not be in favor of making that a cut off time frame.

MS. HARRINGTON: Albe and then Tony.

MR. ANGEL: We're thrilled by the active role that the Federal Trade Commission is taking on the timing issues. It's something that the Billing Reform Task Force has been advocating and we're glad we've been heard. The other characterization of the kind of billing operations that the local exchange carriers run is that it's a loose operation, and it's not uniform and it could be a lot tighter for everyone's benefit.

So to the extent that there are clear signals to consumers, vendors and the LECs know what the ground rules were, we're all benefitted.

The 30 day reporting of the adjustment data is a great bright line because we don't want to get something that's six months old. The 60-day reporting from the consumer alerting them to the fact that just don't sit on your bills, if you see something suspicion, report it on a timely basis. That doesn't foreclose the ability of a LEC to give it adjustment.

It just gives an alert to the consumer that they are going to lose rights with regard to dispute resolution if they don't do it within a timely basis, and by creating the right incentive more of this stuff will come into the system sooner which will enable vendors to protect themselves.

The final time criteria is the 120 day non recourse item which is also of great benefit. It means to the extent that treatment is being pursued by the local exchange carriers, it can't go on indefinitely. At some point just write it off, tell us it's bad debt and we're pleased to know within that time period that you've made that conclusion.

That was the firm recommendation of the Billing Reform Task Force which was an entity that was formed under the auspices of the Interactive Services Association five years ago, and it's finally come to fruition.

MS. HARRINGTON: Tony?

MR. TANZI: Thank you. I just want to make sure that my understanding of this is correct, and I'm going to speak from the consumer point of view. It is not unusual for me to have my bill rendered from Bell Atlantic maybe four to five weeks -- I'm sorry, let me restate that.

It is not unusual for me to have my bills rendered from the LEC at least three weeks after the bill date closes, and it is not unusual for me to have a bill that is hundreds and hundreds and maybe a thousand pages long, so to impose a limit of 60 days for reporting, have that burden placed on me, the University

I'm speaking of now, and my staff where we're required by federal rules because a lot of money comes from federal funding, to certify that we've audited the bill and we have to make inquiry when charges appear on the main University bill that were generated by people that are not responsible for the bill to say that we believe 120 days is not just reasonable, but absolutely necessary before in this case that 120 days are too long.

I would like you to have an opportunity to walk you through how long it takes for us to piece that bill together from all its different sources once it is provided to us, and to try to interact with a number of vendors, it's not unusual to have 30 or 40 different vendors listed on that bill that we have to investigate charges from and we're not the exception.

We're probably the average amongst the college and University environment.

MS. HARRINGTON: Richard?

MR. BARTEL: This discussion reminds me of trying to nail the general to the wall but I think the real solution lies on the front end, and that is to give the consumer an incentive to make timely dispute of a charge and maybe say if the consumer were to report or dispute within a certain amount of time after billing,

they would be given a provisional credit and if that number of days goes by, there's really no particular bar to dispute later on other than some outside limit.

But to give the consumer an incentive to look at their phone bills because these are segregated. It's not like you have to go through a thousand pages to find your pay-per-call charges.

MR. TANZI: Can I respond to that? It's not a question of segregation. It's really a question of trying to trace back the legitimacy or illegitimacy of the call. The bills are clearly presented by vendor. Trying to interact with the vendor, trying to determine who made the call, for what purpose, trying to determine how to get in contact with the appropriate person within the vendor community is really the issue.

The presentation of the bill is straight forward, the process beyond that is horribly convoluted and it tags back to things as necessary as reference numbers, because every time we call, we deal with a different person and we start the process over again.

MS. HARRINGTON: I'm wondering if anyone who did not file written comment on the last question under the timing issues section, that question is monthly or other referring charges, is there a way to protect consumers who notice a recurring charge after several months?

Anyone that did not include that in their comment? For example, I know the AGs did.

Does anyone who did not include comment on that question have anything to say on it and think about that while I call on Albe?

MR. ANGEL: I just wanted to provide an insight with regard to what Tony just said. In the special circumstance of a University, you by and large have an organization that presents special circumstances. Now, it had been my understanding up until today that Universities by and large blocked 900.

They just didn't want to open themselves to a situation where they were going to be encountering premium charges from their dorm rooms, but then I spent a little time talking with Tony, and it looks like we've come full circle here because providers like MicroSoft and Dell and Compaq have computer support services that are free up until a point where the elapsed minimum has been used.

They then role into a 900 and it turns out that the universities particularly with regard to their staff and their professors want to provide access to those 900 numbers that they provide access to, which is a good thing, and dispute resolution procedures probably work pretty well in those contexts, and we've talked through

some technical ways in which they can limit fraud, even in those instances.

But just to think that the garden variety singular household can't review their pay-per-call charges within a two month time frame probably tilts it the wrong way.

MS. HARRINGTON: Now, does anyone who did not write on the last question want to say anything on it? Tony?

MR. TANZI: Could I ask you, one last clarification? It's not just pay-per-call. There's all kinds of services that apply to the bill we're having.

MS. HARRINGTON: Thank you. Richard, did you want to say something?

MR. BARTEL: I didn't file on this. I'll make it brief. Again I don't think there's -- there's an assumption that all 900 number calls must be billed on the LEC bill, but the exchange carriers that carry the traffic can -- the LEC bill is not the only place that the billing mechanism can be invoked. It can be invoked at the interexchange level similar to a credit card number.

You call a 900 number. You get a recording and you put in your credit card number or calling card number, whatever it happens to be, maybe followed by a

PIN if necessary, so I'm not sure that the Federal Trade Commission needs to get involved in contractual relationships between the LECs and vendors more than it needs to get involved at the front end when giving incentives to consumers to look at their phone bills more closely.

MS. HARRINGTON: All right. I think that we either have exhausted this subject or we've exhausted you. I want to make a couple of comments about tomorrow morning and then we're going to go right to public participation. Tomorrow morning we're going to spend really the entire morning on the issue of authorization.

The first discussion is on obtaining proof of expressed authorization, and I want to emphasize that we are going to focus this discussion on the three points that are listed under obtaining proof of express authorization. If you are inclined to stray, I'm going to interrupt your comments and get you back on course.

I will remind you the workshop serves the purpose of surfacing additional information that we need, not the purpose of rehashing the written comments which are very good and are in the record, so please, participants, come in the morning presented to talk about as Marianne and Carole and Adam have noted the

who, what and why of express authorization.

We are not going to talk during the first session about known or should have known or safe harbors. Those come out in the second part of the express authorization discussion from 11:15 to 12:45.

Also please take some times to look at staff handout D and staff handout E which will be referred to tomorrow.

All right. We have three people who have requested some time in the public participation segment, and they are Don M. Reese, Gary Slaiman and Walt Steimel, and is there anyone else whose name I haven't read off who wanted to comment?

If so Carole Danielson has a microphone and she also has some cards. You cannot talk again I'm a rule kind of a gal, so let's go to Don Reese. Don, are you still here? Carole is handing you a Mike. Would you identify yourself and who you represent, please.

MR. REESE: Don Reese. I'm commenting both on behalf of Mirage Marketing as well as the task force of which Mirage is a member of.

I just have two comments. Both of them come incidentally involve written terms being delivered to the consumer. The first is the presubscription that terms and conditions need to be delivered in writing

before service can be presented or provided.

We feel that the current TDDRA rules adequately cover individual protocol presubscription when a caller calls, sets up an account, is given a PIN and then has to call back to a second number and use their PIN and gain access.

If we're forced to have to deliver written terms and conditions prior to providing service, we lose the spontaneity of that caller, so we would like to see the proposed rules amended to require the terms and conditions be delivered before service only when it's a recurring type of charge being sent to the consumer.

Secondly, the written notice that notification needs to be sent to a consumer when they first initiate a dispute, fundamentally based on what we've talked about here simply won't work. The LECs don't have the information to provide that consumer information that the investigation has started.

I think it was Mr. Lavalla talked earlier about that basically just get an adjustment if the scenario existed where a consumer was provided with a tracking number and a letter and said that, Okay, an investigation is now being conducted, and then that charge -- the charge back went to the service provider who then started doing secondary collections on that, I

guess we submitted that the number of complaints that you see in the past will increase dramatically because the consumer really won't know what's going on.

They will think that that letter is really their receipt, that this issue is dead.

MS. HARRINGTON: Thank you. Does anyone have any questions for Mr. Reese? Thanks very much.

MR. REESE: You're welcome.

MS. HARRINGTON: Gary Slaiman, please.

MR. SLAIMAN: Gary Slaiman, and I represent CERB. During the discussion of the definition of telephone-billed purchase I thought I heard Mark, the economist for the Commission, as we were looking for sort of clear lines for definitional purposes suggest that one of the hallmarks of this problem is one company billing charges on another company's bill.

I was concerned about the implications of that as a definitional line since it would depend clearly, and we've discussed this at length today, lead to LECs not being able to by that definition cram because they would be putting charges for their ancillary services on their own bill.

And I wouldn't want to see that be involved on the competitive line going forward basis. I think clearly cramming ought to be in terms of the consumer

and whether the charges is unauthorized as far as the consumer's view of what that charge is, proper or not.

MS. HARRINGTON: Thank you, Mr. Slaiman. Anyone have any questions for Mr. Slaiman? Great. Walt Steimel.

MR. STEIMEL: Walt Steimel, Hunton & Williams representing Pilgrim Telephone. With respect to BNA I think with bill name and address accuracy, timeliness and the format are all problems. As Mark Farrell from Southwestern Bell noted in his comments, when consumers call on one service, they don't want to wait 30, 60 or 90 days to get service, they want to get services now especially in a telecommunications and electronic format.

BNA is not provided on a real time basis right now and it's often provided only in payment records after requested by the LEC with significant time delay so there's an accuracy problem which I believe a lot of parties have commented on in this proceeding.

The fact that there's no instant access to billed name and address means there's no way that a service provider or competing character can verify who they're speaking with on the phone.

If I were to call in to a service provider and try to set up an account, either written subscription

calling card or other access member, I could tell him I was anybody in the world, there's no way they could verify that for 30, 60 or 90 days, and once the charges are passed through there's almost no way I can go back and find those people and bill them.

So the lack of access to real time BNA from the LECs fundamentally prohibits any other billing method other than elect billing.

MS. HARRINGTON: Walt, is this a cost issue or access issue or both?

MR. STEIMEL: It's a cost issue. It's my understanding from speaking with the LECs there's also the 900 block information, I'll skip the cost. It's my understanding from speaking with some of the LECs that they would probably be willing to provide real time BNA in 900 block information in line information database type format if they would guarantee they would get cost recovery for that.

It's further my understanding that in an earlier FCC proceeding several years ago the FCC initially encouraged some of the LECs to build this kind of platform, it's a software routine that would screen out their proprietary information from BNA and blocking information so a competitor would only be able to see what's absolutely necessary and not have access to the

rest of the database.

And then later the FCC changed their mind and some LECs had a significant investment that was lost.

I think what we need is directions from the agencies telling the LECs to make real time BNA and 900 blocking information available on a real time dial up basis through a similar database but also to provide them with a guaranteed mechanism for recovering their costs for doing the software development necessary.

And that way there's no averse cost incentive. In fact they could make a profit from selling this information to vendors, and it would make the information available to vendors, and the agency's requirement to look up this information and use as part of the call verification process and part of their call blocking process.

The last point has to do with ANI billing, and I think it looks like to me there are three types of fraud in ANI billing. There's fraud by vendors, fraud by third parties and fraud by consumers.

On fraud by vendors it seems as though there should be a presumption or you could set up a situation in which there's a presumption in favor of the consumer, when they make a call, deny all knowledge of the call, presumption shifts to their favor until such time as the

vendor produces third-party records verifying the call was made.

In almost every instance the call is going to be transported over one of the major carriers that's facilities based, and there's only four or five carriers that are facilities based nationwide. There has to be an independent call record showing that at least establishes -- that information would then be used by the vendor to establish that, yes, the call did take place.

There are other verification means that vendors --

MS. HARRINGTON: Let me ask a question. In cases of clip on or hacking, there's a transport record.

MR. STEIMEL: That's a separate problem. That's the third-party problem. Sometimes there are other verification methods. If you have access to real time BNA, you could have gotten some information during that process that would help you do some verification as to who's calling and redacting the call.

Secondly there are other information collection mechanisms such as voice printing. Voice printing is permitted for communications providers under 18 USC 25.11 2 A, and you can do that without involving the privacy of the communications by voice printing small

columns of communication and then providing it to the person who's redacting the call so they can determine whether someone else in the household did indeed make the call for refreshes their memory of the call.

MS. HARRINGTON: Wait.

MR. STEIMEL: Once all those mechanisms have been exhausted if there cannot be a definitive proof that he call was made then I think that's where an affidavit from the consumer would be appropriate as the

talking about creating -- you're not going to be tariffing a rate setting having cost data filed setting a rate so the cost recovery occurs?

MR. STEIMEL: That's right, but the LECs aren't going to provide this information for free.

MR. BOLIN: My concern is if you wanted to set up some sort of vendor surcharge.

MR. STEIMEL: No, I was thinking the same way that the other database look ups are done.

MS. HARRINGTON: Kris, I'm sorry?

MR. LAVALLA: To clarify the record, in Bell Atlantic my understanding is they have real time BNA. You can get it online -- Bell Atlantic does have my understanding real time BNA that is available to carriers. Those consumers with CID codes that they can get through the Decast product and in the north and the ESG product in the south.

MR. STEIMEL: I wasn't aware of the availability of that product. We can talk afterwards.

MS. HARRINGTON: Richard, did you have a question for Walt?

MR. BARTEL: Do you see any reason why the terminating LEC for 900 call as opposed to the interexchange carrier couldn't bill a 900 call in the same way as a CLEC or whatever the terminating --

MR. STEIMEL: I'm sorry, I don't understand the question.

MR. BARTEL: If an interexchange carrier that has a CLEC with a 900 area code on to a terminating LEC somewhere, is there any reason why the terminating LEC assuming your company is a terminating LEC Pilgrim -- you have dial tone' consumers? I don't want what Pilgrim does.

MR. STEIMEL: No but remember there's a common carrier and information services provider. They provide student loans.

MR. BARTEL: It's not a CLEC.

MR. STEIMEL: Unless they billed name and address of originating.

MR. BARTEL: Assuming that information was available from an off line basis?

MR. STEIMEL: That's the whole point is that information needs to be available, not only for what we're talking about here but for collect calling services or any kind of casual access calling service.

When it's casual access or 900 dial there's almost by definition not usually direct relationships between the provider and the customer through the LEC. It's somewhat real time BNA. It's impossible.

MR. BARTEL: Other than contractual

relationships, do you know why the originating LECs are required to bill for a 900 service?

MR. STEIMEL: I think because they're the only parties that traditionally provided that service but they're the only parties that know how to bill name address to bill that call without anyone getting that information. It's impossible for anyone to.

MS. HARRINGTON: That may be relevant to a question Adam has for you, Walt.

electronic commerce. It's not like the person walks in the door and you can see them and ask for the driver's license so there's no way to verify right then when the transaction is being made if the person is who they say they are. And without --

MR. COHN: How does BNA get you that?

MR. STEIMEL: You ask on the phone, who are you, you look at the BNA. If they don't match you don't issue a calling card, you don't issue a written presubscription agreement, you don't give them access. It ferrets out all those categories of fraud instantly.

In addition since information services can be provided over a variety of platforms but only 900 number blocking is recognized on a dial tone basis and providing 900 number blocking and requiring that to be blocked up on every call would extend the protection of 900 blocking to all information service and telephone-billed purchases, not just those that are dialed on 900 exchange.

So it actually extends the consumer protection that was always intended. In fact 900 blocking is not required everywhere in the country. Under FCC rules it's only required to put in place by local exchange carriers providing dial tone when technically feasible.

So by up loading a 900 number blocking type

information to a look up data base requiring all vendors and service providers to look that up or provide the protection to a large category of consumers that do not have protection right now.

MR. COHN: Thank you.

MS. HARRINGTON: Okay. I think that in terms of the record, that closes the record for today so stop typing.

Start typing again.

MR. LAVALLA: Kris Lavalla. I wanted to submit for the record a graft, particularly in response to the people from Florida that said that cramming was actually increasing rather than decreasing. These are our results from October through April and I'll make them available outside, but if I can leave these for the record.

MS. HARRINGTON: I would like to close the

C E R T I F I C A T I O N O F R E P O R T E R

DOCKET/FILE NUMBER: R611016

CASE TITLE: PAY PER CALL RULEMAKING

HEARING DATE: MAY 20, 1999

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the notes taken by me at the hearing on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED:

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DEBRA L. MAHEUX

C E R T I F I C A T I O N O F P R O O F R E A D E R

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

_____

SARA J. VANCE