

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Joint Petition of Public Counsel and Attorney
General for Declaratory Statement and for Order
Limiting Third Party Billing by Florida
Telecommunication Companies, Verizon, Embarq,
AT&T, et al. /

Docket No: _____

Filed: February 17, 2009

JOINT PETITION FOR DECLARATORY STATEMENT RECOGNIZING LIMITATIONS ON THIRD PARTY BILLING IMPOSED BY TELECOMMUNICATIONS CONSUMER PROTECTION ACT AND FOR ORDER PROHIBITING TELECOMMUNICATIONS COMPANIES FROM BILLING FOR SERVICES OTHER THAN THOSE AUTHORIZED WITHIN THE ACT

Pursuant to Section 120.565 and other pertinent provisions of Chapter 120, Florida Statutes (2007), Attorney General Bill McCollum and the Office of Public Counsel (“the Petitioners”), by and through undersigned counsel, file this Joint Petition For Declaratory Statement. Petitioners jointly request the Commission to declare that the Telecommunications Consumer Protection Act, Sections 364.601-364.604, Florida Statutes (hereinafter “the Act”), restricts the entities for whom telecommunications companies subject to its jurisdiction may perform third party billing services to the “originating parties” as defined in Section 364.602(4) of the Act, and limits the services that may be the subject of such third party billing arrangements to “telecommunications services” and to “information services,” as that term is defined in Section 364.02(5) of the Act. Petitioners also request the Commission to issue an Order prohibiting telecommunications companies subject to its jurisdiction from performing third party billing for services other than the telecommunications services and information services specified within the Act.

In support thereof, Petitioners state:

1. The name and address of the agency affected and the agency's filed number:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Docket No.: 080159

2. The Attorney General files this Petition pursuant to Article V, Section 4 of the Florida Constitution as the chief state legal officer authorized to intervene in all actions affecting the citizens of Florida. *See State ex rel. Landis v. S.H. Kress & Co.*, 155 So. 823 (Fla. 1934); *State ex rel. Shevin v. Yarborough*, 257 So. 2d 89, 893 (Fla. 1972); and *Shevin v. Kerwin*, 279 So. 2d 836, 838 (Fla. 1973). The Attorney General's address and telephone number are as follows:

Office of the Attorney General
Economic Crime Division
The Capitol – PL01
Tallahassee, Florida 32399-1050
Telephone No.: (850) 414-3300

3. Pursuant to Section 350.0611, Florida Statutes (2007), the Citizens of the State of Florida are represented herein by the Office of the Public Counsel ("OPC") with the following address and telephone number:

Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400

4. The following facts lead Petitioners to initiate this proceeding:

- a. This Joint Petition stems from the practice of telecommunications companies that perform billing and collection functions, for compensation, for entities that market services to customers that are separate from and unrelated to the services that the telecommunications companies provide to their customers. Through “third party billing arrangements,” Verizon, Embarq, AT&T, and other Florida telecommunication companies (the “Carriers”) have placed, and continue to place, charges on customer land line telephone bills on behalf of business entities called third-party vendors. The Carriers place these charges on customer telephone bills pursuant to agreements between the Carriers and companies called billing aggregators, who in turn enter into agreements with various third-party vendors that offer products and services to customers using the internet and telemarketing.
- b. The third-party vendors purport to provide various products and services to thousands of Florida consumers and cause charges for such products and services to be placed by the Carriers on their customers’ telephone bills.
- c. The third party billing arrangements have given rise to numerous abuses of consumers. Through the internet and telemarketing, the third-party vendors frequently employ misrepresentations and deceptive business practices in order to obtain consumer telephone numbers and to bill their products and services to unsuspecting consumers. Consumers do not recognize that providing their telephone numbers is a method for charging purported vendor purchases on their

telephone bills because this charging method is not clearly and conspicuously disclosed.

- d. Using consumers' telephone numbers, the third-party vendors cause consumer telephone bills to be charged for services and products that consumers did not request, did not expressly authorize for purchase, and did not want or need.
- e. The third-party vendors submit charges for products and services to a billing aggregator that processes and submits the vendor charges to the Carriers for placement on the customer's telephone bill.
- f. The Carriers enter into contracts with various billing aggregators for receipt of the processed vendor charges. Among other things, these contracts provide that a substantial amount of the billed vendor charges will be paid to the Carriers as compensation for placement of the charges on customer telephone bills.
- g. Numerous customers who have been charged for purported third-party vendor products and services have complained to the Attorney General that they did not agree to pay by using their telephone bill for third-party vendor products and services, did not want or request such products and services and did not use the products and services.

- h. Moreover, the Carriers have not established and implemented systems of verifying, in advance of billing, that consumers expressly authorized the charges to be placed on their telephone bills. The Carriers instead collect the full amount of contractual compensation associated with placing all claimed charges by the third party vendors on customers' bills, then merely respond to individual incoming complaints to determine whether past billed third-party vendor charges were properly collected from the complainant or whether a refund to the individual complainant should be made. Through this practice of acting only on individual complaints after the fact (rather than verifying the legitimacy of the charges before placing them on their customers' bills), the Carriers minimize the protection they provide to their customers and thereby maximize the amount of contractual compensation paid by the third party vendors and aggregators that they may keep. Many consumers, due to the lack of express authorization, are not aware that unauthorized charges might appear and are contained on their telephone bills and, therefore, do not complain. To the extent that customers are not aware of the third party vendor's unauthorized charges and thus do not complain, the vendor receives money to which it is not entitled and the billing telecommunications company receives a revenue windfall from its share of charges that its customers did not authorize.
- i. The Carriers have charged, and continue to charge, consumers on their telephone bills for products and services that consumers did not expressly agree to purchase, did not agree to pay for by using their telephone bill, do not want and do not use.

5. In a setting in which the legal authority of Carriers to provide the third party billing services described above was not at issue, Petitioners would bring a complaint against the offending telecommunications companies and request the Commission, through rule or order, to fashion a regulatory remedy to the source of abuse. Because nearly all of the complaints involve charges for services other than telecommunications services and information services as defined by the Act, in this instance Petitioners submit that a threshold legal consideration is dispositive of the situation. Petitioners submit that, through the enactment of the Telecommunications Consumer Protection Act, §§ 364.601, et seq., Fla. Stat. (2007), the Florida Legislature effectively addressed the exploitative situation described above by limiting the types of entities and services for which regulated telecommunications companies may perform third party billing services. Specifically, the Act limits the ability of telecommunications companies to perform third party billing to “telecommunications services” and “information services” provided by “originating parties.” As defined in Section 364.602(5) of the Act, “‘Information service’ means telephone calls made to 900 or 976 type services, but does not include “internet services.”¹ The Act (among other things) requires a billing company to place on the consumer’s bill detailed information regarding the name of the third party vendor, the specific charges being levied, and the means of contacting the vendor. Section 364.604, Florida Statutes.

¹ It is important to note that nothing advocated by Petitioners herein restricts the ability of any vendor that is in the business of legally and legitimately providing services other than telecommunications services and information services to market any product or service to consumers. They are free to sell their services to whomever wants them, and to charge for those products and services. They simply cannot employ telecommunications companies to bill for those services and collect money from customers on the vendors’ behalf.

6. Notwithstanding the limitations imposed by the Act, telecommunications companies currently bill for various products and services purportedly sold to consumers by third parties that are neither telecommunications services nor information services within the meaning of the Act. Even if the Carriers were to dispute Petitioners' allegations regarding marketing abuses and inadequate protection of consumers, the Carriers cannot deny that they are, on behalf of third party vendors, billing for services other than the telecommunications services and information services specified within the Act.

7. While the Attorney General and the Office of Public Counsel submit that the provisions of the Act prohibit telecommunications companies from engaging in third party billing for entities and services that are not authorized by the terms of the Act, by their actions and arguments the telecommunications companies have disputed Petitioners' view of the Act.² For instance in the past, Carriers have asserted, and may assert again, that in enacting the Telecommunications Consumer Protection Act the intent of the Florida Legislature was to address solely the requirements that Carriers must meet when they bill and collect charges for telecommunications and information services, and to impose no limitations or prohibitions on their ability to bill and collect for the vast array of goods and services that do not meet the definitions of the Act. By extension of this logic, Carriers would have no statutory obligation to include on consumers' bills the information deemed necessary by the Legislature to protect consumers if the services billed fall within the broad universe of services outside the Act's

² In Docket No. 060650-TL, Petitioners filed a petition stemming from the abuses of a particular vendor of online coupons and email accounts. As a result of negotiations among parties, Petitioners voluntarily dismissed that petition. However, abuses by other vendors, which have been inadequately addressed by the billing telecommunications companies, continue to surface. Therefore, as a result of factual circumstances that differ from those that led to the first petition, Petitioners seek this Declaratory Statement.

narrow and specific definitions of “telecommunications service” and “information service.”³

Petitioners believe that to assign to the Legislature the intent to address, within its “Telecommunications Consumer Protection Act,” only a narrowly defined scope of services, and the intent to exclude the broad array of arrangements that threaten consumers with fraud and abuse from the protective measures of the Act, is absurd on its face.

8. Carriers may also assert, as they have in the past, that the services other than telecommunications and information services for which they provide third party billing and collection arrangements are outside the jurisdiction of the Commission. This assertion misses the point. When they enter third party billing arrangements, the Carriers are not providing to their customers the services for which they bill on behalf of third party vendors. Instead, the Carriers are providing *billing and collection* services to the *third party vendors*. Petitioners are asking the Commission to address—not the services that third parties can market to consumers—but the subjects and concomitant charges that regulated Carriers can legally place on the bills they render to their customers. The billing and collection practices of the regulated Carriers, as affected by the Act, comprise a matter that clearly is within the regulatory jurisdiction of the Commission.

³ An illustration will serve to demonstrate the folly of this view of the Act. If the Legislature intended to leave Carriers free to contract with third party vendors other than providers of telecommunications services and information services, a Carrier would be free to contract with a hardware store to bill its telephone customer for a pipe wrench, with a restaurant to bill its telephone customer for a pizza delivery, with an infomercial company to bill its telephone customer for gym equipment, and so on. Further, in each of these instances and with respect to the countless other potential “third party vendors” the carrier (because under this logic the terms of the Act would necessarily be inapplicable to the transactions) would have no statutory obligation to explain on the bill the purpose of the charge, the name of the vendor, or how to contact the vendor.

9. While Petitioners believe the arguments of the Carriers are not credible, the positions and actions they have taken in defending their contractual arrangements and the revenues they receive from third parties have created doubt as to the applicability of the Act to the injurious marketing and billing practices described above. Petitioners submit that a declaratory statement is the appropriate procedural vehicle through which to address the dispositive nature of Petitioners' contention. Petitioners request the Commission to issue a Declaratory Statement interpreting and applying the terms of the Act in the manner that will give effect to the protection of consumer interests that the Florida Legislature intended. Specifically, Petitioners request the Commission to declare that, pursuant to the Telecommunications Consumer Protection Act, the Carriers may provide third party billing services only for "telecommunications services" and "information services" as those terms are used and defined within the Act, and in doing so must conform to the full requirements of the Act.

10. In addition to the declaratory statement, to protect consumers' interests, Petitioners request the Commission to implement its interpretation of the Act by issuing an order prohibiting telecommunications companies subject to its jurisdiction from charging consumer telephone bills and performing third party billing services for entities providing services other than those authorized by the Act, and subjecting any telecommunications companies that fail to conform to said order to the disciplinary actions that are appropriate under the circumstances.

11. Petitioners do not object to the participation of affected telecommunications companies in the proceeding on this Joint Petition. Petitioners request the Commission to prepare an expedited briefing schedule that will allow it to consider the parties' respective legal

arguments and to issue the Declaratory Statement within the 90 day time frame set forth in Section 120.565, Florida Statutes.

WHEREFORE, the Attorney General and the Office of Public Counsel hereby request the Commission to grant this Petition for Declaratory Statement and for an Order prohibiting all Florida telecommunication companies from placing any and all third party charges not authorized by the Telecommunications Consumer Protection Act on the telephone bills of Florida consumers.

Respectfully submitted,

BILL MCCOLLUM
ATTORNEY GENERAL

J.R. KELLY, PUBLIC COUNSEL

JOSEPH A. MCGLOTHLIN
Associate Public Counsel
Florida Bar No. 163771

MICHAEL PALECKI
Bureau Chief
Economic Crime Division
Florida Bar No. 223824

KEITH P. VANDEN DOOREN
Special Counsel
Economic Crime Division
Florida Bar No. 209260

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Attorney General's and Public Counsel's Joint Petition for Declaratory Statement has been furnished by U.S. Mail on this 17th day of February, 2009, to the following:

Patrick L. "Booter" Imhof
General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32300-0850

Susan S. Masterton
Embarq Florida, Inc.
Mailstop: FLTH00102
1313 Blair Stone Rd.
Tallahassee, FL 32301

Tracy Hatch
c/o Mr. Gregory Follensbee
AT&T Florida
150 South Monroe Street, Suite 400
Tallahassee, FL 32303-1561

Mr. David Christian
Verizon Florida LLC
106 East College Ave., Suite 710
Tallahassee, FL 32301-7721

Joseph A. McGlothlin