Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Decision CRTC 2005-19

Ottawa, 30 March 2005

900 service – Agreements and consumer safeguards

References: 8665-C12-15/02 and Bell Canada Tariff Notices 740 and 741

In this decision, the Commission establishes new consumer safeguards for 900 service. New protection measures include the addition of public awareness tools to increase consumer awareness of the terms and conditions for 900 services, the reduction of maximum per call charges for certain 900 services, a requirement that telephone companies initiate 900 call blocking at no charge, and the extension of certain safeguards that applied only where the telephone company performed the billing and collection function, such as the requirement to waive reasonably disputed charges, to all 900 content service providers.

I. Introduction

1. 900 service permits callers to place calls to 1-900 prefixed telephone numbers and connect to a pay-per-call program delivered by a third party called a 900 content service provider. The pay-per-call programs that 900 content service providers deliver include live and pre-recorded services such as adult chat lines, vote casting, psychic consultations, horoscopes, soap opera updates, games, donations processing, sports scores, weather forecasts, translation, and medical, legal or government services.

2. 900 service is a tariffed network service provided by Aliant Telecom Inc. (Aliant Telecom), Bell Canada, MTS Allstream Inc. (MTS Allstream, formerly known as MTS Communications Inc.) and TELUS Communications Inc. (TCI) (collectively, the 900 service carriers or the Companies). The operation of 900 service is governed by the National Services Tariff for Aliant Telecom, Bell Canada and MTS Allstream, the General Tariff of TCI, and three agreements: the Service Provider (SP) agreement, the Accounts Receivable Management (ARM) agreement and the Alternate Billing Arrangement (ABA) agreement (collectively, the agreements). The Commission has approved these tariffs and agreements. The agreements define the business relationship between the 900 service carrier and the 900 content service provider.

3. 976 service is also a pay-per-call service, which is provided only by Bell Canada in Ontario and Quebec. Bell Canada provisions 976 service under its General Tariff, an SP agreement and an ARM agreement.

4. The SP agreement sets out the terms and conditions under which a 900 service carrier provides 900 service to 900 content service providers. The SP agreement defines network-related parameters, 900 service program number ownership and assignment, attributes of the preamble required for 900 service programs, and advertising.

5. Under an ARM agreement, the 900 service carrier bills 900 service callers on behalf of the 900 content service provider using the originating telephone number from which a 900 call is placed. The 900 service carrier pays the 900 content service provider the amount collected from the caller, less certain fees and chargebacks[1].

6. Under an ABA agreement, a 900 content service provider can bill 900 service callers directly using the call detail information provided by the 900 service carrier. Alternately, the 900 content service provider can contract out the functions of billing and collection to other organizations.

7. 900 content service providers also have billing options in addition to those contained in the ARM and ABA agreements, which include credit card, debit card, prepaid authorized payment and payment intermediaries.

8. A description of the consumer safeguards applicable to 900 service prior to the release of this decision can be found in Appendix A.

II. Proceeding

9. The Commission received an application dated 28 November 2001, from the Companies under Tariff Notice 740 (TN 740), proposing the following revisions to the agreements:

   - provide consumer protection for 900 services accessed via the Internet by requiring the preamble information to be set out in a dialogue box and to require users to mouse click on an "I agree" button or otherwise clearly indicate their consent before charges commence;

   - include additional information requirements that 900 content service providers must fulfil in order to ensure that 900 service callers recognize that they can be billed by a party other than the telephone company for a 900 service call;

   - prohibit "scratch and win" type frauds that generally involve individuals receiving game cards by mail that indicate that the recipient has won a prize and must call a 900 number to obtain information on redeeming the prize; and

   - reduce caller charges from $25 to $5 for games of chance where the 900 content service provider's primary purpose is to realize a profit from the charges paid by callers to a 900 number.

10. On 19 December 2001, the Companies filed Tariff Notice 741 (TN 741), proposing changes to the ARM agreement. The Companies proposed increasing the maximum charge for a call to a High-Cap Psychic Line (HCPL) service from $100 to $200, and decreasing the maximum per minute charge from $10 to $6 for such calls.

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[1] Chargebacks are caller charges waived by the Companies and absorbed by the 900 content service providers. Chargebacks are described fully in paragraphs 71 and 72 of this decision.

11. In *900 service – New interim consumer safeguards*, Telecom Order CRTC 2002-143, 9 April 2002 (Order 2002-143), the Commission approved, on an interim basis, the changes proposed by the Companies under TN 740.

12. The Commission issued *900 service – Agreements and consumer safeguards*, Telecom Public Notice CRTC 2002-2, 9 April 2002 (Public Notice 2002-2) in response to the applications filed by the Companies under TNs 740 and 741.

13. In Public Notice 2002-2, the Commission sought public input with respect to:

- the changes proposed in TNs 740 and 741;
- the effectiveness of existing consumer safeguards associated with 900 service, as well as the mechanisms and procedures for their enforcement, and if ineffective, any possible changes to them; and
- if consumer safeguards similar to those contained in the ARM agreement should apply when the 900 content service provider performs the billing and collecting functions.

14. In the Public Notice 2002-2 proceeding, the Commission received comments from the Commissioner of Competition, Industry Canada (Commissioner of Competition) dated 21 May 2002, the Consumers' Association of Canada (Manitoba Branch) and the Manitoba Society of Seniors (CAC/MSOS) dated 21 May 2002, the International Service Bureau dated 21 May 2002, First Media Group (FMG) dated 17 July 2002, the Companies dated 18 July 2002, the Public Interest Advocacy Centre on behalf of the Consumers' Association of Canada, the National Anti-Poverty Organization and l'Union des consommateurs (the Consumer Groups) dated 18 July 2002, Bill Elder dated 9 April 2002, Claudia Faille dated 12 April 2002, and Bill Cuell dated 27 April 2002.

15. The Commission addressed interrogatories to the Companies dated 9 April 2002, and received the Companies' responses to these interrogatories dated 7 May 2002.

16. Ken Langille and the Consumer Groups each addressed interrogatories to the Companies dated 27 May 2002. The Commission received the Companies' responses to these interrogatories dated 26 June 2002.

17. The Commission received reply comments from the Companies and from the Consumer Groups dated 9 August 2002.

III. Parties' comments

18. Parties to this proceeding provided their views on the appropriateness of imposing additional requirements on 900 content service providers and on the Companies. Parties generally submitted that new consumer safeguards would provide consumers with information and other tools to protect themselves from unanticipated 900 service charges and unauthorized calls to 900 service programs.

19. For organizational purposes, the Commission has grouped the comments of the parties into seven different sections:

1. public awareness tools;
2. reduction of maximum charges for certain 900 service programs;
3. measures to limit consumer risk;
4. other requirements for 900 content service providers;
5. extension of ARM agreement consumer safeguards to 900 content service providers using alternate billing arrangements;
6. 900 service carrier restrictions; and
7. complaints process and enforcement measures.

1. Public awareness tools

a) Preamble at the start of a 900 service program

i) Consumer protection for 900 services accessed via the Internet

20. In TN 740, the Companies proposed to amend the definition of "preamble" in the agreements to address Internet-based 900 service programs as follows:

> "Preamble" means an introductory message at the start of a Program, up to three (3) minutes in length, which states the charge of the call, a description of the Program and the name of the Service Provider. It informs the Caller that billing begins only after the Preamble period and allows the Caller to hang up before that point without incurring charges. For Internet protocol based 900 service applications, the Preamble shall include a dialogue box, with the Preamble information set out in clear language with text of at least 12 point font size. Before charges commence, Callers to Internet protocol based 900 service must mouse click on an "I Agree" button, or otherwise clearly indicate their consent. (The additional proposed wording is underlined.)

21. The Companies submitted that the proposed changes would ensure that Internet users were informed that they would be billed for accessing a 900 service program via the Internet. According to the Companies, presenting preamble information in text form and requiring the user to acknowledge acceptance of that information by clicking an "I Agree" button would require the user to make a conscious decision to proceed with the 900 service program, just as a voice caller does by remaining on a call after the preamble has finished.

22. In regard to the Companies' proposed wording "Before charges commence, Callers to Internet protocol-based 900 services must mouse click on an 'I Agree' button, or otherwise clearly indicate their consent", the Consumer Groups stated that they were concerned that this provision might be interpreted as permitting a negative option consent.

23. The Consumer Groups submitted that, in order to effectively protect consumers against unintentional 900 service calls via the Internet, it was critical that this rule clearly require an opt-in form of consent. The Consumer Groups therefore proposed that the phrase "through an opt-in process" be added to the end of the sentence quoted above.

24. CAC/MSOS similarly submitted that the preamble information should clearly indicate that by clicking on the "I Agree" button, callers were agreeing to be charged for the call. CAC/MSOS submitted that this consent should not mean simply failing to disconnect, but should take the form of some type of positive act on the part of the caller.

25. The Commissioner of Competition supported the Companies' proposed changes to extend consumer safeguards to customers who chose to use the Internet to access 900 service programs, but recommended that the preamble should be:

    a) limited to a short, accurate and clear message;

    b) easily legible, (i.e., no block or capital letters and no narrow spacing or faint print);

    c) phrased using plain language (i.e., no uncommon words or phrasing); and

    d) displayed to the Internet viewer before the transfer occurs, with the viewer having ample opportunity to refuse the new connection.

26. In reply, the Companies submitted that the language proposed by the Consumer Groups could be confusing and would be subject to interpretation. The Companies stated that, as an alternative, they would not object to rewording the clause to read "or otherwise clearly indicate their explicit consent". The Companies submitted that this change, which would reflect the spirit of the Consumer Groups' proposal, would be clearer and less subject to interpretation.

27. The Companies agreed with CAC/MSOS' suggestion that the text presented in the dialogue box should clearly indicate that clicking on the "I Agree" button or otherwise clearly indicating explicit consent, meant consenting to be charged for accessing the 900 service program. The Companies stated that while this was implicit in the existing preamble requirements, particularly in the context of online activity where the preamble text might not be read thoroughly by the user, a requirement that consent be explicit would further ensure that consumers were informed that charges would apply if they clicked on the "I Agree" button.

28. In reply, the Consumer Groups agreed with the Commissioner of Competition's proposals regarding the presentation of the preamble information in the dialogue box.

ii) Additional information requirements regarding alternate billing arrangements

29. In TN 740, the Companies proposed to amend the SP agreement by adding the following:

> Where a program is being billed under an Alternative Billing Arrangement Agreement, each Service Provider's advertisement, publication or other communication containing a Program number (other than a telephone directory listing or telephone directory advertising listing) or URL related to a 900 Program, must contain an appropriately understandable statement specifying a) that the charges for the call will not appear on the Caller's phone bill, b) that the Caller will be separately billed for the call, c) the name of the entity that will be billing for the Call and d) that the Companies may deliver personal information relating to the Caller for the sole purpose of billing the Call.

30. The Companies also proposed to modify the specification of a preamble in the ABA agreement by adding the following:

> The Preamble shall clearly indicate: a) that the charges for the call will not appear on the Caller's phone bill, b) that the Caller will be separately billed for the call, c) the name of the entity that will be billing for the call and d) that the Companies may deliver personal information relating to the Caller for the sole purpose of billing the Call.

31. The Companies stated that they proposed these changes because they had received complaints from customers who had received bills via the ABA process for 900 services that did not have the telephone company logo and were not similar to other bills distributed by the Companies. The Companies submitted that some customers had refused to pay bills from 900 content service providers, concerned that the bills could be part of a scam.

32. CAC/MSOS generally supported the amendments proposed by the Companies, but were of the view that the information provided on telephone bills was insufficient. CAC/MSOS submitted that the 900 content service provider's free inquiry telephone number should also be provided, perhaps during the preamble, to make all callers aware of what to do if they needed to contact the billing entity.

33. FMG stated that it fully supported informing callers both in advertising and in the preamble that they would be billed by a third party. FMG submitted, however, that the Companies' proposed additional requirements would be expensive, unduly repetitive and extremely wasteful of time and space. FMG submitted that, having informed the caller of the billing entity in the advertising and again in the preamble, there was no further need to reiterate that the charge for the 900 service call would not appear on the caller's telephone bill, these calls would be billed separately, and the Companies might deliver the billing information to the billing entity.

iii) Applying the preamble to all 900 service programs

34. The Consumer Groups stated that the data on 900 service complaints provided by the Companies showed that in some cases, a caller claimed to have been unaware of the charges. The Consumer Groups submitted that, to address this concern, the preamble requirement should be extended to all 900 service programs, with the sole exception of calls where the caller intentionally bypasses the preamble.

35. The Consumer Groups noted that Article 3.4 of the SP agreement sets out the preamble requirement, but that exceptions to this requirement include situations where:

- the charge for the call is a flat rate of $3 or less, and the call does not involve a program that uses the receipting option, a number that is listed in a telephone directory, or a program directed at callers under 18 years of age; and
- a repeat caller voluntarily disables the preamble (although such bypass must be disabled for 30 days following any price increase).

36. The Consumer Groups submitted that the first exception to this rule should be removed, as it left open the potential for callers to be charged when they did not expect to be. The Consumer Groups claimed that $3 was a significant amount for many customers and those charges could accumulate to a large amount over a 30-day period. The Consumer Groups submitted that removing the preamble exception for flat rate per call charges under $3 would likely reduce the incidence of unintentional 900 service activation, and hence the number of complaints.

iv) Games of chance

37. The Consumer Groups stated that it was important to fully inform consumers of their options with respect to entering a game of chance offered via 900 numbers. The Consumer Groups submitted that, in particular, callers should be informed of any ways to freely enter a game of chance offered using 900 service at no charge, prior to any charges being applied, through general advertising and through the preamble at the commencement of all calls to the 900 number in question.

38. CAC/MSOS stated that the United States' (U.S.) Federal Trade Commission's (FTC) 900 Number Rule requires that advertisements for games of chance must indicate the odds of winning and if the odds cannot be calculated in advance, must include the factors affecting those odds, such as the number of entries. CAC/MSOS noted that, under the FTC's 900 Number Rule, there must be a free method of entering the sweepstakes and this method must be disclosed in the advertisement or the preamble. CAC/MSOS recommended requiring 900 content service providers to include this information in advertisements and in the preamble for games of chance. CAC/MSOS added that, should a description of the prize be included, it should be accurate and not in any way misleading.

v) Complete disclosure of 900 service charges

39. CAC/MSOS recommended that increased disclosure requirements should be implemented that would require disclosure of all possible charges to call a 900 service program. CAC/MSOS stated that many of the complaints made by consumers related to the unexpected occurrence of charges or to the level of the charges. CAC/MSOS noted that the definition of "preamble" in the agreements only states that the charge for the call must be disclosed.

40. CAC/MSOS noted that the FTC's 900 Number Rule states that if a flat fee is charged for a call, the amount must be disclosed in the preamble, but if the call is billed on a time-sensitive basis then the preamble must state the cost per minute and the minimum charge, if any. CAC/MSOS stated that the FTC's 900 Number Rule also provides that if the program's length can be determined in advance, the preamble must disclose the maximum charge incurred should the caller listen to the complete program. CAC/MSOS recommended implementing similar requirements in Canada.

41. CAC/MSOS submitted that if different rates applied to various portions of the program, this must also be disclosed in the preamble. CAC/MSOS also submitted that callers must be made aware that if their call was transferred to another pay-per-call service, other charges would apply.

42. CAC/MSOS suggested that an announcement be made periodically during the call indicating that a certain amount has been billed. According to CAC/MSOS, many callers might not realize how quickly charges could build up, and callers should be made aware of this during the call or when they are on hold.

b) Public awareness of consumer rights

i) Use of 900 service programs by minors

43. CAC/MSOS suggested providing information in monthly billing statements to inform parents to caution their children that calls to 1-900 numbers should not be made without their parent's permission.

44. CAC/MSOS noted that Article 3.4 of the SP agreement indicates that programs intended for callers under the age of 18 must contain a statement in the preamble that callers under the age of 18 require parental permission and that, if they do not have it, they must hang up or disconnect immediately. CAC/MSOS stated that they were concerned that this was not sufficient to ensure that the caller had parental permission.

45. In reply, the Companies stated that they would consider participating in a public education campaign if inappropriate use of 900 service by minors was demonstrated to be a widespread problem.

ii) Difference between toll-free and 900 numbers

46. CAC/MSOS submitted that there might be confusion on the part of some consumers regarding the differences between the 1-800 or 1-888 series of toll-free numbers and the 1-900 series of pay-per-call numbers. CAC/MSOS stated that it was well known that 1-800 and 1-888 numbers were generally toll-free and submitted that some consumers might believe that a 1-900 number was also toll-free. They added that there were numerous area codes in both Canada and the United States which began with an '8' or '9'. In CAC/MSOS's view, there might be confusion, for example, that calls to locations with an '8' area code were toll-free or that long distance phone numbers beginning with a '9' might somehow be related to a 900 service program.

47. CAC/MSOS also submitted that telephone scams were luring customers into calling international long distance numbers similar to 1-800 numbers, such as to area code 1-809, without being aware that they were being billed at astronomical rates. Accordingly, CAC/MSOS recommended that the telephone companies commence an educational campaign to increase consumer awareness. According to CAC/MSOS, information could be included in monthly statements or made available on the Companies' websites.

48. In reply, the Companies stated that they were not aware of confusion between toll-free and 900 numbers being a problem. The Companies submitted that if such confusion became a significant issue, they would consider participating in a public education effort. The Companies believed, however, that if the problem existed at all today it was an isolated issue, best dealt with through the chargeback process.

iii) Information to be provided in 900 service bills

49. The Consumer Groups submitted that the FTC's minimum disclosure requirements on telephone bills were appropriate and should be adopted by the Commission. The Consumer Groups noted that the FTC's 900 Number Rule stipulates that for each 900 call billed by the telephone company, the statement should include the date, time and, for services that have per minute rates, the length of the call. They noted that the FTC's 900 Number Rule also stipulates that these charges must appear separately from local and long distance charges. According to the Consumer Groups, the more information that consumers had on their bills about 900 service charges, the less likely it was that they would need to call the telephone company with questions about the charges.

50. According to the Consumer Groups, the same billing disclosure requirements should apply to 900 content service providers who bill directly and to any other agents billing on behalf of 900 content service providers.

51. The Companies submitted that their current billing practices exceeded FTC requirements. According to the Companies, when a 900 call was billed on the Companies' regular telephone bill under an ARM agreement, the charge appeared in the "Chargeable Messages" portion of the bill under a separate heading for 900 service. The Companies submitted that for each 900 call, the bill set out the date, start time, duration, 900 number called, description of 900 service program called and the total charge for the call before taxes. The Companies noted that at the end of the "900 service" section, the bill set out a total of the 900 service charges, before taxes.

52. The Companies stated that they were unaware of the 900 content service providers' current practice with regard to providing bill detail under the ABA agreement, but supported the proposal that similar call detail to that currently provided to callers billed under the ARM agreement should be provided to callers to 900 service programs billed via the ABA agreement. The Companies submitted that they provided 900 content service providers with detailed billing information, as required by *Revisions to 900 service*, Telecom Decision CRTC 94-4, 25 February 1994 (Decision 94-4).

2. Reduction of maximum charges for certain 900 service programs

a) Games of chance programs

53. In TN 740, the Companies proposed to lower the maximum charges from $25 to $5 per call for games of chance for profit programs, to further protect consumers by limiting their potential risk.

54. CAC/MSOS stated that they supported the proposed amendment.

55. The Consumer Groups submitted that, while they supported the proposed amendment, even $5 per call was too high for such services. According to the Consumer Groups, Quebec law stipulates that there is a maximum charge of $0.50 for entry into games of chance. The Consumer Groups submitted that Quebec law provides an appropriate benchmark and that games of chance offered by 900 content service providers across Canada should charge in a manner consistent with the most stringent provincial law.

56. In reply, the Companies submitted that the Consumer Groups' proposal to apply the maximum charge specified in one province's legislation to 900 service programs offered in other provinces would be inappropriate. In the Companies' view, notwithstanding the maximum charge that the Companies were willing to bill for games of chance offered via 900 service, as stated within the ARM agreement, the 900 content service provider must ensure compliance of its 900 service program with the appropriate laws and regulations. According to the Companies, the agreements do not document, or even attempt to canvas, all the specific laws and regulations that might apply in all cases.

b) High-Cap Psychic Line programs

57. In TN 741, the Companies proposed to revise two sections of the ARM agreement that applied to HCPL programs. The Companies proposed to reduce the maximum per minute charge for calls to HCPL programs from $10 to $6 and to increase the maximum charge per call from $100 to $200.

58. In support of their proposal, the Companies submitted that their customers had requested longer call duration. The Companies noted that no 900 content service providers currently charged more than $6 per minute for calls to a HCPL program. They also noted that at $6 per minute with a maximum charge of $100, a call to such a service would be terminated when the maximum charge was reached after 16 to 17 minutes. According to the Companies, the proposed changes would allow 900 content service providers to increase revenues and improve customer service by doubling the time each 900 service caller could spend on a call.

59. The Companies submitted that, in their experience with HCPL programs, chargeback levels were independent of maximum call charges. The Companies further submitted that complaints about 900 service charges most frequently related to the fact that a charge was made, rather than to the amount of the charge.

60. The Consumer Groups and CAC/MSOS stated that they supported lowering the maximum per minute charge from $10 to $6, which was in keeping with current billing practices. According to the Consumer Groups, there was no reason to permit rates higher than what were currently being charged for this type of service, and they submitted that, if anything, per minute rates should be capped at a rate lower than $6.

61. The Consumer Groups and CAC/MSOS submitted that the Companies had provided no evidence of significant customer demand for increasing the maximum per call charge from $100 to $200, and without evidence of customer demand, they did not support the proposal to increase the limit.

3. Measures to limit consumer risk

a) Call blocking

i) Charge for call blocking

62. The Consumer Groups noted that the Companies indicated in response to an interrogatory that most customers who complained about 900 service ordered call blocking when it was offered to them. According to the Consumer Groups, it appeared that when call blocking was offered free of charge, for example by TCI, many more customers took it. The Consumer Groups noted that for Bell Canada, 56 percent of complainants to the executive office and/or the Commission ordered call blocking when it was first offered, while 91 percent of TCI's complainants took it. The Consumer Groups submitted that these statistics suggested that the $10 fee charged by Bell Canada deterred some customers from accepting call blocking.

63. According to the Consumer Groups, the justification for Bell Canada's $10 call blocking fee appeared to be two-fold: to compensate Bell Canada for the incremental cost of implementing such blocking and to deter frivolous requests for call blocking. The Consumer Groups submitted that both of those justifications should be re-examined.

64. The Consumer Groups submitted that the Companies' costs had changed significantly over time. The Consumer Groups stated that it was likely that the costs of provisioning call blocking were substantially smaller now than they were at the time the rate was approved. The Consumer Groups submitted that the call blocking fee was a deterrent for some customers who could benefit from the service, and should therefore be eliminated, or at least lowered to a level justified by Phase II costs.

65. The Consumer Groups submitted that any fear that some customers might use free call blocking frivolously was unsupported by any evidence, nor were they aware of any frivolous requests for call blocking. The Consumer Groups therefore submitted that there was no need to apply any fee for this service, other than to compensate the Companies for the incremental costs of providing it.

66. The Consumer Groups noted that TCI charged an administrative fee of $18 to terminate or subsequently add call blocking. The Consumer Groups submitted that this charge was inappropriate and contrary, in spirit if not technically, to the rule that a maximum of $10 be charged for this service. The Consumer Groups submitted that TCI should be required to lower this fee to no more than $10.

67. The Companies acknowledged that for a minority of callers, the $10 fee for call blocking might pose a financial or psychological barrier to taking call blocking. The Companies stated that, consequently, they would not oppose the removal of the charge for the initial ordering of call blocking. The Companies submitted, however, that they incurred administrative costs related to executing orders for services such as call blocking. They stated that those costs varied among the Companies, but in all cases would be significantly more than $10. The Companies, therefore, argued that they had a legitimate interest in ensuring that callers did not repeatedly add and terminate call blocking. The Companies submitted that the removal of the charge for initiating call blocking should only take place if it was combined with a reasonable charge, for example, the $18 fee currently charged by TCI for each subsequent change to call blocking.

ii) Default to call blocking

68. The Consumer Groups submitted that the option of blocking access to 900 numbers was an integral aspect of consumer protection for 900 services. The Consumer Groups suggested that an option to block access to all 900 numbers unless the customer requested access to the service, should be considered if the current regime continued to generate a high number of customer complaints. The Consumer Groups submitted that another option was to implement personal password access to 900 services, which would aid those subscribers who wished to access 900 services, but could not stop unauthorized calls from being made.

69. Bill Cuell suggested that the Commission should consider making call blocking a network-wide default, such that callers would have to call the Companies' business offices to have call blocking removed before any 900 calls could be placed.

70. In reply, the Companies indicated that they were opposed to the suggestion that the Commission consider making call blocking a network-wide default. According to the Companies, network-wide call blocking was commercially unreasonable and its implementation would be a direct challenge to the viability of 900 services. The Companies questioned whether the benefit to consumers would justify the significant burden on the Companies, on 900 content service providers and on callers who enjoyed the 900 service programs.

b) Automatic waiver of all first-time 900 service charges that are disputed

71. Article 1 of the ARM agreement states that chargebacks are Caller charges waived by the Companies and absorbed by the 900 content service provider pursuant to Article 6.4.

72. Article 6.4 of the ARM agreement (paragraphs 1 to 4) states that:

> The Companies will waive all Caller charges for Service Provider's Program(s) that:
>
> - are reasonably disputed pursuant to each Company's collection procedures for 900 service, and

- pertain to calls made before a Caller has had the opportunity to avail himself of call blocking for 900 service.

Such Caller charges shall be absorbed by the Service Provider by means of a debit to the Service Provider's account.

Where a Caller disputes or raises an objection with respect to any Caller charges, the appropriate Company will offer to provide a call blocking service to the Caller and provide relevant call detail information to the Service Provider as set out in Article 9.2.

In the event of subsequent disputes relating to Caller charges, the Companies will waive any disputed charges, which shall be absorbed by the Service Provider by means of a debit to the Service Provider's account. The Companies will provide to the Service Provider relevant call detail information as set out in Article 9.2

73. The Consumer Groups submitted that a waiver of 900 service charges should be provided automatically upon dispute. According to the Consumer Groups, evidence suggested that some of the Companies might be applying an unreasonably high standard when interpreting the requirement in the ARM agreement that calls be "reasonably disputed". The Consumer Groups submitted that an automatic waiver would be fair, given that 900 services were blocked only upon request rather than by default, and that telephone service was commonly shared among household members, including, in many cases, children and mentally impaired individuals.

74. In the view of the Consumer Groups, the fact that the caller had never incurred 900 charges in the past and had not yet been informed of the call blocking option was proof enough of the reasonableness of the dispute. The Consumer Groups submitted that telephone companies should not be in a position of judging the "reasonableness" of the dispute beyond those clear parameters.

75. FMG did not comment specifically on the issue of whether chargebacks should be automatic for first-time disputed charges in the context of the ARM agreement, but did comment on the current chargeback provisions and on the question of whether the current provisions should be included in the ABA agreement. FMG submitted that there was no requirement, nor enforcement potential, for a clause regarding the waiver of first time disputed charges in the ABA agreement. FMG submitted that the current safeguards greatly reduced the requirement to additionally protect the consumer with a waiver of charges for first-time disputes.

76. FMG submitted that callers continued to have some legitimate quality of 900 service issues when, for example, value was not received due to a bad connection or an accidental hang-up. According to FMG, in those instances the waiving of the 900 service charges by the Companies could benefit customer relations.

77. FMG stated that neither 900 content service providers nor the Companies could ensure that a consumer's phone was only used for authorized calling. FMG submitted that the Companies did not normally accept claims that calls were not authorized as a reason to waive charges for other services, such as long distance.

78. In reply, the Companies stated that they believed that the Consumer Groups' suggestion for an automatic waiver of charges had merit. According to the Companies, an automatic chargeback for disputed first-time 900 service charges to the 900 content service provider would remove a subjective component from 900 consumer safeguards and reduce the Companies' administrative burden. The Companies submitted that such a waiver of charges would be subject to confirmation that the dispute was indeed a first-time incidence, and indicated that such a change might have a substantial impact on 900 content service providers' chargeback levels.

c) Notification of first-time 900 service charges that exceed $50

79. The Consumer Groups submitted that if the automatic waiver of first-time disputed charges was not implemented and telephone companies continued to be arbiters of the reasonableness of first-time customer disputes, the telephone companies should be required to notify customers immediately, by telephone, of any first-time 900 service charges over $50. According to the Consumer Groups, customers were exposed to significant billing risk by having to wait up to 30 days before they were notified that they had, for the first time, incurred substantial 900 service charges. In the view of the Consumer Groups, immediate notification by telephone would likely reduce the magnitude of chargebacks as well as the number of complaints that the Companies had to deal with. The Consumer Groups submitted that such notification should include instruction on how to block future calls to 900 service charges.

80. The Consumer Groups requested consideration of an immediate notification requirement even if an automatic waiver process was adopted, given the additional benefits that it provided to both customers and telephone companies. According to the Consumer Groups, an immediate notification process would serve to reduce customer anxiety, customer time and effort involved in disputing charges, and company time and resources spent dealing with complaints. The Consumer Groups submitted that, given the resources currently deployed by Bell Canada in the resolution of 900 service disputes, the costs of such notification might be less than the resultant savings due to fewer disputes.

81. In reply, the Companies noted that a notification process of the nature proposed by the Consumer Groups would serve as an additional safeguard for consumers, over and above the preamble requirements related to rates and charges. The Companies submitted that such an announcement could benefit 900 content service providers by reducing the number of chargebacks, as callers would be less likely to argue that they were unaware of the charges they had incurred.

82. The Companies submitted, however, that new routines and procedures would need to be developed to identify first-time callers, identify instances where the billed amounts exceeded the threshold, and place the notification calls. The Companies stated that recovery of the associated costs would be a concern for them. The Companies submitted that it was not clear if the benefit of immediate notification would justify the costs of implementation.

d) Requirement for callers to signal their desire to incur charges by way of a positive act

83. The Consumer Groups submitted that requiring 900 content service providers to obtain a positive indication after the preamble from 900 service callers that they wished to continue with the call would protect 900 service callers. According to the Consumer Groups, this could be done at minimal cost and with little inconvenience to the customer, in the same way that integrated voice response systems commonly require customers to press the pound key in order to continue.

84. CAC/MSOS submitted that callers could be asked to press the asterisk or pound key to indicate their consent to accept charges, rather than having only a very brief period of time to hang up before charges began to accrue. According to CAC/MSOS, this would allow consumers to make a conscious decision to accept the charges and would lessen the confusion that presently existed as to when billing commences.

85. In reply, the Companies submitted that dialling a 900 number and staying on the line after the charges were disclosed in the preamble were both positive acts that signified an intention to incur 900 service charges. In the Companies' view, requiring a further positive act by the caller was unnecessary. The Companies stated that they assumed that 900 content service providers would be responsible for the costs to implement a requirement for a further positive act, and they questioned whether the minimal benefit to consumers would justify the costs.

4. Other requirements for 900 content service providers

a) Scratch and win type fraud

86. In TN 740, the Companies proposed to amend the wording in the SP and ARM agreements to prevent scratch and win type fraud, as set out in the *Competition Act*. The Companies stated that typically in scratch and win type fraud, individuals would receive game cards through the mail, which indicated that the recipient had won a prize and had to call a 900 number to obtain information on claiming the prize. According to the Companies, in many instances the value of the prize would be deceptively presented and the caller would be unaware that the cost of the call exceeded the value of the prize.

87. The Companies proposed to prevent scratch and win type fraud by including a clause in the ARM agreement that states that the Companies will not purchase the accounts receivable of a 900 content service provider for:

> Games of Chance for Profit where the delivery of a prize or other benefit to the participant or Caller is or is represented to be conditional on the payment of any amount by the participant or Caller through a 900 Program charge.

88. The Companies also proposed to add the following clause to the SP agreement:

> No Service Provider shall operate or allow to be operated on a 900 Number the Service Provider controls, a 900 Program where the delivery of a prize or other benefit to the participant or Caller is or is represented to be conditional on the payment of any amount by the participant or Caller through a 900 Program charge.

89. CAC/MSOS stated that they supported the proposed amendment prohibiting scratch and win type programs. CAC/MSOS submitted that, according to information provided by AT&T and the U.S. National Fraud Information Centre, fraud costs the U.S. telecommunications industry more than $4 billion per year and costs consumers more than $40 billion per year. CAC/MSOS suggested that although those statistics were from the U.S., it was reasonable to assume that the costs were comparable in Canada. CAC/MSOS submitted that the Companies should therefore take an active role in identifying and prohibiting scratch and win type programs and other types of fraud.

90. The Commissioner of Competition recommended that the wording of the SP and ARM agreements with respect to scratch and win promotions simply make reference to the fact that such promotions fall within the purview of sections 52, 53 and 74.01 of the *Competition Act*. According to the Commissioner of Competition, by making reference to the *Competition Act*, all matters of this sort would be consistently addressed by a single law enforcement agency.

91. The Commissioner of Competition stated that, while he generally supported the proposed measures to prohibit scratch and win scams, he had some concerns regarding the wording of the proposed changes and the possibility of inconsistent public messages.

92. The Commissioner of Competition submitted that a proposed amendment to section 53 of the *Competition Act* regarding the use of scratch and win cards[2] made it absolutely clear that even inviting a card recipient to call a toll number in order to receive information regarding a prize or collect a prize could be a violation of the new law.

93. The Commissioner of Competition also submitted that charging someone to participate in a contest constituted a lottery, and such games of chance fall under various sections of the *Criminal Code*. According to the Commissioner of Competition, the Competition Bureau and PhoneBusters[3] considered the price of a postage stamp or a local phone charge to be a cost that would cause a promotion to fall under the definition of a lottery.

94. The Consumer Groups agreed with the Commissioner of Competition that the Commission's rules, as set out in the relevant 900 service agreements, should not undermine other regulatory efforts to deal with the same or similar problems or undermine general consumer protection laws. According to the Consumer Groups, reference to the law in the relevant agreements would be appropriate and helpful for all parties. The Consumer Groups submitted that where such law was insufficient, the Commission should provide for additional safeguards.

b) Toll-free links to 900 services

95. The Consumer Groups stated that a potential cause of unintentional 900 service calls by callers was the linking of toll-free numbers with 900 numbers, such that callers might believe they were making a toll-free call when they were actually being channelled into a pay-per-use calling service. The Consumer Groups noted that the FTC's 900 Number Rule prohibits the following practices:

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[2] Which has been in force since 2 June 2002.

[3] PhoneBusters is the Canadian Anti-Fraud Call Centre jointly operated by the Ontario Provincial Police and the Royal Canadian Mounted Police.

i) using toll-free numbers for pay-per-call services, unless the caller has a pre-existing agreement with the company or the call is charged to a credit card;

ii) connecting callers directly from a toll-free number to a 900 number; and

iii) collecting callbacks by 900 service providers where the customer has dialled a toll-free number first.

96. The Consumer Groups submitted that similar safeguards were appropriate for Canadian consumers.

97. In reply, the Companies stated that they agreed that the practice of linking toll-free and 900 service programs was potentially deceptive and agreed with the restrictions suggested by the Consumer Groups. The Companies noted that there was currently a prohibition against deceptive, misleading or fraudulent practices by 900 content service providers, and where monitoring had detected links between toll-free and 900 calling that fell within the prohibition, appropriate action had been taken.

c) Use of 900 service programs by minors

98. CAC/MSOS stated that they were concerned that 900 content service providers were allowed to target minors. CAC/MSOS noted that under the FTC's 900 Number Rule, children under the age of 12 could not be targeted, unless the 900 service program related solely to education. CAC/MSOS noted that in the U.S., for example, 900 services that induced children under 12 to call in and speak to their favourite cartoon characters were prohibited. CAC/MSOS recommended that similar safeguards be implemented in Canada.

d) References to other 900 service programs

99. The Consumer Groups submitted that prohibiting 900 content service providers from pressuring or encouraging callers to use the 900 service again or to call other 900 service programs would limit the damage caused by easily accessible 900 services. The Consumer Groups stated that they were not aware of the extent to which such practices contributed to the current level of customer dissatisfaction with 900 services, but they submitted that such safeguards were appropriate unless it could be conclusively shown that the practices in question were not a problem.

100. In reply, the Companies stated that they were not aware of the extent to which pressure to call frequently or to call other 900 service programs was a problem, but submitted that they did not oppose the restriction. The Companies noted, however, that the enforcement of such content restrictions would be subject to the limitations of the content monitoring and termination process.

e) Collection practices reflecting industry standards

101. The Consumer Groups submitted that unless it could be conclusively shown that unethical or annoying collection practices by 900 content service providers were not a cause of consumer complaints, the rules regarding collection practices applicable to 976 content service providers should apply to 900 content service providers.

102. The Consumer Groups noted that in *CRTC gives final approval to changes to 976 service*, Order CRTC 2001-502, 29 June 2001, the Commission directed Bell Canada to amend its ARM agreement with 976 content service providers to include the same list of prohibited practices, with necessary changes, that exist in the relevant provincial collection agency legislation and regulations.

103. The Consumer Groups submitted that the collection and reporting to credit bureaus of disputed 900 service charges should be prohibited, until the company handling the dispute had provided the customer with a full explanation as to why it considered the charges legitimate and the Commission had upheld the company's right to collect.

104. The Consumer Groups noted that the Companies stated in a response to an interrogatory that laws and regulations always applied, and therefore did not need to be repeated in contracts. The Consumer Groups submitted that, while this was true, reminding parties of certain statutory obligations by way of the agreements, where compliance with such obligations was problematic in the past, was likely to improve compliance and was therefore desirable.

105. In reply, the Companies submitted that there was no evidence on the record of this proceeding that inappropriate collection activities were a significant problem for 900 service. The Companies noted that 900 service was a national service offering, unlike 976 service, which was limited to Ontario and Quebec. According to the Companies, to comply with the Consumer Groups' suggestion, the ARM agreement would have to incorporate the legislation of the ten provinces and three territories, as well as any amendments that occurred over time. The Companies questioned whether such a complex response was necessary for a problem for which no evidence indicated that it existed. The Companies noted that 900 content service providers were bound by applicable collections legislation, regardless of whether or not it was repeated in the agreements.

5. Extension of ARM agreement consumer safeguards to 900 content service providers using alternate billing arrangements

The Companies' comments

106. The Companies submitted that the core consumer protection measures included in the ARM agreement could also be included in the SP agreement in order to provide consumers with additional protection to address unsatisfactory interaction with non-compliant 900 content service providers operating outside the ARM agreement. The Companies defined the core consumer protection measures as call blocking, the chargeback mechanism, the service provider inquiry line, and the preamble requirement. The Companies submitted that all 900 content service providers must sign a SP agreement, so including the core consumer protection measures in the SP agreement would ensure a universal and consistent level of consumer protection, regardless of the billing mechanism adopted by the 900 content service provider.

107. The Companies submitted that the core consumer protection measures could be effective regardless of whether or not the Companies were directly involved in billing and collecting 900 charges. According to the Companies, 900 content service providers would be contractually obligated by the SP agreement to maintain a chargeback and call blocking procedure identical to that existing under the ARM agreement, and callers who did not receive

proper chargeback or call blocking protections would have the option of complaining to the Companies and/or the Commission. The Companies submitted that 900 content service providers who did not operate in compliance with the SP agreement would not be able to enforce 900 charges in the civil courts. The Companies noted that the 900 service program preamble was provided over the network, and 900 content service providers would retain their ability to independently determine its quality and adequacy.

108. According to the Companies, it was important to note that various alternative payment mechanisms had their own consumer protection measures. The Companies noted that, for example, credit cards, debit cards and pre-authorized debit all had chargeback arrangements. The Companies further noted that a dissatisfied 900 service caller was able to bring a complaint before the appropriate court, just like any other consumer.

109. The Companies submitted that, in light of their proposal to include the core consumer protection measures in the SP agreement, no purpose was served by duplicating the remaining safeguards contained in the ARM agreement in the ABA agreement. The Companies submitted that the core consumer protection measures were meaningful consumer safeguards that provided the caller with effective control and choice. The Companies stated that, in contrast, the measures that restate federal or provincial law are largely symbolic and provide little additional consumer protection. The Companies submitted that the operations and brand protection measures found in the ARM agreement related to the Companies' business interests and were not consumer safeguards.

110. The Companies noted that 900 service, as provided under the ABA agreement, consisted of basic connectivity and the provision of basic usage information. According to the Companies, the service was comparable to toll-free calling, and there was no rationale for the Companies to be obliged to supervise the quality of goods or services sold or the billing practices of third parties making use of toll-free connectivity.

Comments from FMG

111. FMG submitted that the consumer safeguards afforded by the 900 service tariffs, which included free time for the preamble and price disclosure in advertising, protected callers to 900 services offered under ABA agreements. FMG submitted that, as with all 900 service applications, failure of the 900 content service provider to provide for the mainstay consumer safeguards should result in termination of service in conformity with the provisions of the SP agreement.

112. FMG submitted that the Companies did not normally accept unauthorized calling as a reason to waive other types of charges, such as long distance charges. FMG stated that service providers such as the Companies could do little to ensure that a customer's phone was only used for authorized calling.

113. FMG stated that, in operating its 900 service under an ABA agreement, it maintained excellent customer relations, in part through the occasional waiving of reasonably disputed 900 service charges. FMG concluded that there was no requirement, nor could there be enforcement in the ABA agreements, of a waiver clause for first-time disputed charges.

Comments from the Consumer Groups and CAC/MSOS

114. The Consumer Groups and CAC/MSOS indicated that they supported the application of the same consumer safeguards to all 900 and 976 content service providers. According to CAC/MSOS, there should be certainty and conformity with respect to billing practices. CAC/MSOS submitted that consumers should not be expected to know that they were not protected simply because a different entity was sending out the bills. According to the Consumer Groups, consumers deserved to be protected from abusive practices regardless of billing arrangements between the 900 content service providers and the telephone companies. The Consumer Groups were of the view that exceptions to the uniformity of the safeguards should only be allowed in cases supported by full justification.

115. The Consumer Groups submitted that in addition to the Companies' proposal, the following safeguards that currently exist in the ARM agreement should also be included in 900 and 976 SP agreements and tariffs:

- service charge waivers for first-time 900 service users who reasonably dispute the charges and agree to 900 service blocking;
- notification to customers disputing 900 service charges that they can have such calls blocked upon request to their local telephone company;
- maximum charges per call for programs aimed at persons under the age of 18;
- maximum charges per call for games of chance for profit;
- maximum charges per minute and per call for psychic line programs;
- maximum charges per call for subsequent value programs as set out in Article 7.5(d) of the ARM agreement;
- prohibition of charges for programs that use repetitive scripts, long holding periods, extraneous verbiage or long downloading procedures as a means of prolonging the call; and
- customer privacy protection rules, as set out in Schedule D of the ARM agreement.

116. The Consumer Groups and CAC/MSOS noted that the Companies stated in response to an interrogatory that having a schedule to the SP agreement that described the types of 900 service programs for which they would not enter into SP agreements would violate section 36 of the *Telecommunications Act* (the Act), because it would attempt to control or regulate the content or meaning of the 900 service program, and such a restriction would be subject to a challenge under the *Charter of Rights and Freedoms* as a violation of freedom of expression. The Consumer Groups and CAC/MSOS disagreed with that position. CAC/MSOS stated that the implementation of safeguards to protect consumers had nothing to do with the

content of the 900 service program. According to CAC/MSOS, the Companies were not dictating the content of the 900 service program, but were simply ensuring that it was not illegal, fraudulent or misleading.

117. The Consumer Groups submitted that the service-specific restrictions proposed above would be approved by the Commission and would therefore meet the requirements of section 36 of the Act. According to the Consumer Groups, such restrictions, even if they were found to infringe on the right to free speech, would meet the *Charter of Rights and Freedoms'* requirement of being demonstrably justified in a free and democratic society.

118. The Consumer Groups noted that the restrictions in question would not limit the ability of 900 content service providers to offer their services, but would simply limit the charges that could be applied for certain types of services and prohibit the charges where the service prolonged the call unnecessarily. The Consumer Groups argued that none of these restrictions unduly limited freedom of expression on the part of 900 content service providers. According to the Consumer Groups, the restrictions infringed on section 2(b) of the *Charter of Rights and Freedoms* in the aid of consumer protection, an important and legitimate goal, and would involve only a minimal impairment of the right to free expression.

119. CAC/MSOS submitted that Schedule D of the ARM agreement, which sets out privacy protection rules, should apply to 900 content service providers under the ABA agreement.

120. The Consumer Groups submitted that the privacy protection rules included in Schedule D of the ARM agreement were made law via the federal *Personal Information Protection and Electronic Documents Act*, and that they presumably apply to 900 content service providers. The Consumer Groups submitted that it would be helpful to remind 900 content service providers, by way of the customer privacy protection rules, of their obligations when collecting caller information.

The Companies' reply comments

121. In reply, the Companies noted that FMG submitted that the existing ABA agreement adequately protected consumers through the preamble and price disclosure requirements, and argued that the broader application of consumer safeguards, specifically the waiver of first-time disputed charges, was outside the scope of the ABA agreement. The Companies submitted that all 900 content service providers could not be counted on to appropriately balance consumer interests with their own business interests. The Companies reiterated that for this reason the core consumer protection measures should apply to all 900 service programs, and submitted that 900 content service providers that provided acceptable customer relations would be relatively unaffected by such a measure.

122. The Companies stated that they had no objection to the proposal that the privacy protection measures described in Appendix D of the ARM agreement should apply to all 900 service programs regardless of the billing entity, although they noted that 900 content service providers would be required, in any event, to comply with existing applicable federal or provincial privacy laws and regulations. The Companies stated that other clauses in the agreements required the appropriate safeguarding of confidential customer information and

described the permitted uses of such information. According to the Companies, incorporating the broad privacy protection rules set out in Appendix D of the ARM agreement into the SP agreement was not necessary.

6. 900 service carrier restrictions

a) Disconnection of a customer's telephone service for failure to pay 900 service charges

123. The Consumer Groups submitted that the Commission should expressly prohibit disconnection of local or long distance service for failure to pay 900 service charges, as the Federal Communications Commission had done in the U.S. The Consumer Groups stated that they were concerned that some of the Companies might be threatening to disconnect the telephone service of customers if their 900 service charges were not paid. The Consumer Groups submitted that this practice was completely inappropriate. They stated that it was not clear how widespread this problem was, but submitted that it would be helpful to establish a rule that clearly stated that failure to pay 900 service charges could not result in disconnection of any service other than access to 900 services.

124. In reply, the Companies noted that it was not their policy or practice to disconnect local or long distance service for failure to pay 900 service charges. The Companies submitted that their Terms of Service prohibit the suspension or termination of a tariffed service for failure to pay 900 service charges. According to the Companies, there was no commercial incentive for them to disconnect their subscribers for failure to pay an alleged debt to a third party. The Companies submitted that the current safeguards relating to disconnection of telephone service were sufficient and that there was no evidence that disconnection or threat of disconnection for failure to pay 900 service charges was a problem for consumers.

b) Limited liability

125. CAC/MSOS stated that they were concerned that the limited liability clauses in Article 6 of the SP agreement, Article 7.12 of the ARM agreement and Article 11 of the ABA agreement were too broad, and that the Companies should assume some responsibility for loss or damage. According to CAC/MSOS, it was not unreasonable to suggest holding the Companies to a standard equal to that of any other provider of goods or services, namely that they make reasonable efforts to ensure that the 900 services they offered were legitimate and that they provide full and accurate disclosure regarding the charges that could be incurred.

126. In reply, the Companies submitted that CAC/MSOS' comments reflected a misunderstanding of the Companies' role in provisioning 900 service and the Companies' status as a carrier.

127. The Companies stated that they provided the network infrastructure for 900 service and, optionally, a billing and collection service, but they did not provision 900 service program content or services. The Companies submitted that, as Canadian carriers providing a tariffed service, they had very little scope for refusing to provide service to 900 content service providers or for interfering with program content. According to the Companies, it would be unreasonable to impose extensive liability on 900 service carriers who had little choice over who their customers were and how their customers used carrier facilities.

c) Ensuring 900 services are lawful

128. CAC/MSOS noted that Article 3.7 of the SP agreement states that the Companies are not responsible for ensuring that contests and lotteries are lawful. CAC/MSOS recommended that the Companies take reasonable measures to ensure that the 900 services they offer to consumers are legal.

129. In reply, the Companies submitted that the 900 content service provider must ensure compliance of its program with the appropriate laws and regulations, and as a result the agreements do not document the specific laws and regulations that may apply.

130. The Companies noted that the SP and ARM agreements specify the conditions under which the Companies offer 900 calling functionality and are willing to undertake billing functions on behalf of 900 content service providers. The Companies noted that Article 3.1 of the SP agreement, states:

> The Service Provider is responsible for the preparation and/or recording of all Programs which must comply with applicable Federal, Provincial and Municipal laws, and regulations.

131. The Companies further noted that Article 3.7 of the SP agreement states:

> [t]he Companies are not responsible for contests and lotteries and their promotion. It is the sole responsibility of the Service Provider to ensure that all aspects of its service are lawful.

7. Complaints process and enforcement measures

a) Procedure for consumer complaints

132. CAC/MSOS recommended that regardless of whether billing was done under an ARM agreement or an ABA agreement there should be a procedure similar to the procedure described in the FTC's 900 Number Rule to handle customer complaints. CAC/MSOS noted that the FTC's 900 Number Rule sets out a number of requirements for billing entities for handling customer complaints. CAC/MSOS further noted that the FTC's 900 Number Rule also provides that if a billing entity breaches any of those requirements, it forfeits its right to collect the disputed amount, even if it is ultimately determined that the charges are valid.

133. CAC/MSOS stated that one of the rights afforded to consumers was the right to have redress or compensation when goods or services were unsatisfactory or unfairly charged. According to CAC/MSOS, there should be a uniform procedure in place with set guidelines to process complaints in a fair and timely manner, regardless of who the billing entity is.

134. CAC/MSOS noted that the FTC's 900 Number Rule stipulates that any billing entity, whether it is the 900 service carrier or the 900 content service provider, must give notice to customers as to their rights as consumers and the obligations of the billing entity. CAC/MSOS suggested implementing a similar requirement, in order to ensure that customers were aware of what to do in the event they wished to dispute a 900 service charge.

135. The Consumer Groups noted that once a customer had disputed a 900 charge, subsequent disputes might not qualify for a waiver of charges from 900 service carriers. According to the Consumer Groups, Bell Canada's internal data indicated that close to one quarter of complaints did not involve first-time occurrences, and 12 percent of complainants were not provided with a credit. The Consumer Groups proposed that when billing disputes had not been resolved within a given period, for example 30 days, the disputes should be submitted to the Commission for a ruling and customers should not be charged interest on the amounts in dispute.

136. In reply, the Companies submitted that one of the themes running through the CAC/MSOS submission was the desirability of bringing Canadian 900 service regulation in line with the FTC's 900 Number Rule, for example, with regard to complaints procedures and billing disclosure. The Companies agreed that there was valuable guidance to be taken from the FTC's approach to 900 service regulation, but noted that the telecommunications industry in the U.S. had a significantly different structure and had experienced different challenges. The Companies also noted that there were variations in jurisdiction and enforcement power between the Commission and the FTC.

137. The Companies noted that when a charge was disputed by a caller who was not eligible for a waiver of charges, the charge was assigned back to the 900 content service provider by the Companies. The Companies submitted that, as a result, unresolved disputes did not directly involve the Companies. The Companies stated that, nevertheless, they supported the orderly resolution of 900 service charge disputes by an impartial third party.

b) Enforcement of consumer safeguards

138. The Companies submitted that the existing safeguards and enforcement mechanisms were effective and did not require change.

139. According to the Companies, statistical evidence of customer complaints about 900 service directed to the Commission and to the Companies' executive offices in the past four years, indicated that the level of complaints was quite manageable. The Companies submitted that all tracked complaints over that period related to disputes of 900 service program charges, and the majority of the complaints fell into the category of first-time callers to 900 service programs. The Companies stated that, in most disputed cases, they credited the customers' accounts for the amount of the disputed charges. The Companies further stated that 75 percent of Bell Canada's complainants and 91 percent of TCI's complainants subsequently subscribed to 900 service call blocking.

140. The Companies stated, in response to interrogatories, that for a five-month period in 2002, Bell Canada kept detailed records on complaints handled by a dedicated group of customer service representatives who specialized in handling calls regarding 900 service. The Companies stated that during this time:

- approximately 1,360 complaints per month were processed within the group;
- most calls, approximately 78 percent, were first-time occurrences;

- approximately 62 percent of customers subsequently subscribed to call blocking; and

- most customers, approximately 88 percent, were provided with a credit.

141. According to the Companies, there were currently three enforcement mechanisms for 900 service consumer safeguards: initial program review, ongoing program monitoring and termination of an SP agreement for non-compliance. The Companies submitted that the initial 900 service program review was an effective tool for detecting inadvertent breaches of the agreements, but it was not an effective tool to screen out 900 content service providers who deliberately sought to mislead callers. The Companies further submitted that ongoing program monitoring was reasonably effective in detecting non-compliant behaviour and also acted as a deterrent. Finally, the Companies submitted that the termination of an SP agreement for non-compliance required the Companies' employees to make difficult subjective judgments that had resulted in expensive litigation with 900 content service providers and, on occasion, appeals to Commission staff. In the Companies' view, termination of an SP agreement had mixed success as a tool for enforcement.

142. The Companies submitted that there were relatively few consumer complaints that were not resolved by the core consumer protection measures. According to the Companies, those measures, such as the chargeback policy and call blocking, were the most effective mechanisms for preventing problems and resolving disputes relating to 900 service. The Companies submitted that, in contrast, they had a limited ability to police the 900 service for consumer protection concerns.

143. The Consumer Groups suggested that enforcement of consumer safeguards would improve if the Commission were to make disconnection orders against 900 content service providers and prosecute them for violations of the SP agreement, when appropriate, under section 73(2)(b) of the Act, based on complaints received or referred to them by the telephone companies. In addition, the Consumer Groups noted that section 73(2)(b) of the Act provides for prosecutions where a condition of service under section 24 of the Act has been contravened. The Consumer Groups submitted that, because the SP agreement was approved by the Commission, the safeguards in it constituted conditions of service, as did the rules set out in relevant Company tariffs. The Consumer Groups submitted that the Commission should establish a streamlined process under which such prosecutions took place as a matter of course when 900 content service providers were clearly violating the rules.

144. According to the Consumer Groups, one problem with the current 900 service regime related to repeated violations of existing rules. The Consumer Groups submitted that the current approach to enforcement of 900 service rules appeared to be inadequate, and it was critical that any rules, existing as well as new, were properly enforced. In their view, there was no point creating rules that could be disregarded without consequence.

145. The Consumer Groups stated that the only enforcement tool currently used appeared to be termination of service, under the SP agreement. They noted that the Companies stated, in response to an interrogatory, that Bell Canada disconnected 64 content service providers for breaches of the ARM or SP agreements between 15 September 1999, and 14 March 2002, 56 of which were for content violations and for misleading or deceptive preamble/advertising.

146. The Consumer Groups noted that the Companies stated in response to an interrogatory that, based on their experience, they viewed termination as a sanction with limited effectiveness. The Consumer Groups noted that, in particular, the Companies claimed that:

i) the prospect of liability for improper termination caused the Companies to be cautious in using this sanction;

ii) the termination process was a relatively slow and procedurally cumbersome process; and

iii) 900 content service providers could take steps to limit the effectiveness of termination through the use of multiple corporate identities (i.e., treating terminated numbers as little more than a business expense).

147. The Consumer Groups submitted that relying on voluntary telephone company disconnection for enforcement of consumer protection regulations for 900 service was inadequate. The Consumer Groups noted that the Companies submitted in response to an interrogatory that in certain circumstances, it would be appropriate for the Commission to take a more active role in sanctioning non-compliant 900 content service providers.

IV. Commission's analysis

1. Public awareness tools

a) Preamble at the start of a 900 service program

i) Consumer protection for 900 services accessed via the Internet

148. The Commission is of the view that, just as in the case of a voice caller to a 900 service program, Internet users must be informed that they will incur charges for accessing a 900 service program via the Internet. Accordingly, the Commission determines that the changes proposed by the Companies in TN 740, to apply the preamble to the Internet-based 900 service programs, are appropriate, and this addresses the Consumer Groups' concern.

149. The Commission considers that the rewording suggested by the Companies in their reply comments to change the definition of "preamble" to state that Internet users must click on an "I agree" button or "otherwise clearly indicate their explicit consent" is also appropriate.

150. As suggested by CAC/MSOS, the Commission considers that the information contained in the dialogue box must clearly indicate that by clicking on an "I Agree" button, Internet users are agreeing to be charged for accessing a 900 service program. Although this information is implicit in the existing preamble requirements, the Commission considers that it should be explicitly stated in the context of on-line activity, in order to increase the likelihood that Internet users will be aware of charges.

151. With regard to the appearance of the Internet preamble text, the Commission notes that the Companies proposed that the preamble information should be set out in clear language with text of at least 12-point font size. The Commission considers, however, that the Commissioner of Competition's recommendations regarding the presentation of preamble text in the dialogue box are reasonable, and will make it easier for callers to understand the consequences of using 900 service over the Internet.

152. In light of the above, the Commission determines that the Companies are to ensure that the definition of "preamble" in the agreements state that the preamble text in the dialogue box for Internet-based 900 service programs must include the following:

i) be limited to a short, accurate and clear message;

ii) be easily legible (i.e., avoid unnecessary use of block and capital letters and no narrow spacing and faint print);

iii) use plain language (i.e., no uncommon words or phrasing);

iv) using 12-point font size;

v) be displayed to the Internet user before the transfer occurs; and

vi) clearly indicate that by clicking on the "I Agree" box, or by otherwise clearly indicating their explicit consent, Internet users are agreeing to be charged for accessing a 900 service program.

ii) Additional information requirements regarding alternate billing arrangements

153. The Commission is of the view that the Companies' proposals made in TN 740 concerning the provision of additional information to 900 service callers should enhance the callers' understanding of how their 900 service calls will be billed and, therefore, improve the 900 content service providers' ability to collect. The Commission is of the view that if callers are only informed of the billing entity, as suggested by FMG, they may not fully understand the billing arrangements. For example, callers may not understand that calls will be charged on a separate bill or that the Companies will deliver billing information to the billing entity. The Commission notes that the Companies proposed to exempt telephone directory listings and advertising listings from the additional information requirements. The Commission determines that while the standard and other non-advertising listings will be exempt, advertising in the Companies' directories will not be exempt.

154. With respect to CAC/MSOS's suggestion that the 900 content service provider's free inquiry telephone number should be provided during the preamble, the Commission notes that Article 4.2 of the ABA agreement requires the 900 content service provider to provide its free inquiry telephone number on its bills. In the Commission's view, the existing requirement is sufficient.

iii) Applying the preamble to all 900 service programs

155. The Commission notes that charges of $3 or less per call could accumulate to a large amount within a billing period. The Commission agrees that there should not be an exception to the preamble requirement where there is a flat rate charge of $3 or less for the call. The Commission is of the view that the preamble should apply to all 900 service programs unless a repeat caller gives clear consent to bypass it. Accordingly, the Commission considers that there should be a preamble for all 900 service programs including those with a flat rate of $3 or less, unless a repeat caller voluntarily disables the preamble (although such bypass must be disabled for 30 days following any price increase).

iv) Games of chance

156. The Commission notes that the federal, provincial, or municipal government with the relevant jurisdiction over lotteries or games of chance is responsible for making determinations on such issues as whether 900 content service providers must provide a free method of entering contests or must indicate the odds of winning. The Commission further notes that Article 3.1 of the SP agreement states that all 900 content service providers must comply with the applicable federal, provincial and municipal laws and regulations.

157. With respect to the suggestion that prize descriptions should not be misleading, the Commission notes that Article 3.1 of the SP agreement reminds 900 content service providers to comply with all applicable laws.

158. The Commission determines that the preamble must describe any alternate ways to enter into a sweepstake or a game of chance that do not involve calling a 900 number, to help callers avoid unnecessary 900 charges.

v) Complete disclosure of 900 service charges

159. In order to ensure that the preamble discloses all possible 900 service charges, as suggested by CAC/MSOS, the Commission determines that the Companies must amend the definition of "preamble" in the agreements to state that all possible rates and charges must be disclosed, including flat fees, per minute rates, minimum or maximum charges, and all of the different rates that may apply to various portions of a program. In addition, the Commission is of the view that the preamble must advise callers that if their call is transferred to another pay-per-call service, other charges will apply.

160. With regard to providing a mid-call announcement of charges being incurred, the Commission notes that no evidence was presented to demonstrate that this would be technically possible or, if it were possible, what the costs of providing this service would be. Moreover, the Commission is of the view that the preamble will provide sufficient notice of all applicable charges, including the maximum charges per call. Accordingly, the Commission does not consider it appropriate to require a mid-call announcement.

b) Public awareness of consumer rights

i) Use of 900 service programs by minors

161. With regard to the concerns raised by CAC/MSOS about the need to inform parents to caution their children about the use of 900 service without parental permission, the Commission considers that those concerns can be alleviated using a public awareness program that makes use of the Companies' websites and an annual billing insert.

ii) Difference between toll-free and 900 numbers

162. In regard to an extensive public education campaign to ensure that customers are made aware of the difference between toll-free calls and calls made to 900 numbers or other area codes, the Commission finds that there is insufficient evidence of customer confusion to warrant such a campaign. To the extent that there may be confusion for customers, the Commission considers, however, that any possibility of such confusion will be greatly reduced by including information on 900 service carriers' websites and in annual billing inserts, clarifying that calls made to 900 numbers and long distance area codes beginning with an '8' are provided for a charge, unlike calls to 800 and 888 numbers, which are toll-free.

iii) Information to be provided in 900 service bills

163. With regard to the Consumer Groups' submission that bills for 900 service should include the date, time, and for services that have per minute rates, the length of the call, the Commission notes that the Companies' current billing practices exceed these requirements. The Commission is of the view, however, that it would be beneficial that all 900 callers receive this level of billing detail information to ensure that they will have the information needed to verify the accuracy of the 900 service charges. Therefore, the Commission considers that the SP agreement should be amended to require 900 content service providers to provide the same level of detail in bills as the Companies' provide.

iv) Public education plan

164. In order to increase public awareness of consumer rights with regard to a billing dispute, the use of 900 service programs by minors, call blocking, and 900 service charges, the Commission determines that the Companies must provide the following information on their websites and in an annual billing insert using clear and concise language with a text of at least 12-point font size:

i) a reminder that parents should caution their children to not call 900 numbers without permission;

ii) a reminder that 900 services and long distance area codes beginning with an '8' are provided for a charge to callers, unlike toll-free services;

iii) information about the availability of call blocking; and

iv) a statement that consumers may contact the Commission to seek resolution of an unresolved dispute with a 900 content service provider or the 900 service carrier.

165. The Commission notes that the annual insert must be provided in electronic format to customers who are billed via the Internet using the same clear, concise language and 12-point font size.

2. Reduction of maximum charges for certain 900 service programs

a) Games of chance programs

166. The Commission considers that the Companies' proposal, made in TN 740, to reduce the maximum charge for games of chance from $25 to $5 per 900 call is reasonable and would help protect customers by limiting the potential risk. The Commission notes that, notwithstanding the maximum amount the Commission may establish, 900 content service providers must ensure compliance of their programs with the appropriate federal, provincial and municipal laws and regulations, pursuant to Article 3.1 of the SP agreement.

b) High-Cap Psychic Line programs

167. The Commission considers that the proposal, made in TN 741, to reduce the maximum per minute rate for HCPL programs from $10 to $6 is reasonable, given that no 900 content service providers are currently charging more than $6 per minute for these programs.

168. The Commission notes that the Companies did not provide sufficient evidence to substantiate their claim that customers were requesting longer call durations for HCPL programs. Accordingly, the Commission is of the view that it would not be appropriate to increase the maximum charge from $100 to $200 per call for these programs.

3. Measures to limit consumer risk

a) Call blocking

169. In Decision 94-4, the Commission stated that the Companies are to offer call blocking to any subscriber who requests it at a nominal one-time setup charge of up to $10, with no recurring monthly charges. The Commission stated that any additional cost to the company of providing call blocking should be recovered through the rates charged for 900 service.

i) Charge for call blocking

170. The Commission notes that Bell Canada, Island Telecom Inc. (Island Tel), Maritime Tel & Tel Limited (MTT), and NBTel Inc. (NBTel) charge $10 to initiate call blocking. The Commission also notes that MTS Communications Inc., NewTel Communications Inc., and TCI do not charge to activate this feature, but TCI charges $18 in Alberta for subsequent requests to add or delete 900 call blocking.

171. The Commission notes that, according to the statistics provided by the Companies, 91 percent of complainants in TCI's serving territory took call blocking when offered at no charge, whereas only 56 percent of complainants in Bell Canada's serving territory took call blocking at a $10 charge when it was first offered. The Commission further notes that 19 percent of Bell Canada's customers who initially refused call blocking subsequently ordered it. In the Commission's view, these statistics suggest that a charge may deter customers from taking call blocking. Accordingly, the Commission considers that it would be appropriate to remove the charge for initiating call blocking.

172. The Commission is of the view, however, that the Companies should, at their option, be able to charge for any subsequent changes to call blocking, in order to prevent customers from repeatedly adding and terminating call blocking. The Commission is of the view that the charge should be a nominal one, no more than $10, and any additional costs to the Companies for the termination or addition of call blocking should be recovered from the rates charged for 900 service. The Commission considers, accordingly, that TCI must reduce its charge from $18 to $10.

ii) Default to call blocking

173. The Commission notes that the Consumer Groups and Bill Cuell suggested that the Commission should consider the alternative of blocking all 900 calls by default unless the consumer requests access to the service. The Consumer Groups also submitted that another option was to implement personal password access to 900 services. The Commission considers that other 900 service safeguards, including changes to the costs for call blocking, sufficiently address these concerns. The Commission notes that there is no evidence on the record of this proceeding regarding the feasibility of, or the costs associated with, the implementation of password access to 900 services. The Commission considers that other 900 service safeguards, including changes to the costs for call blocking, sufficiently address these concerns.

b) Automatic waiver of all first-time 900 service charges that are disputed

174. Under the current chargeback provisions, telephone companies waive all charges that are reasonably disputed for first-time disputes, but the current provisions do not require that the dispute relate to first-time charges for a particular customer. The Commission notes that the Consumer Groups proposed an automatic waiver of charges for first-time billing disputes, but did not explain in detail how the automatic waiver would work. The Commission is of the view that if the automatic waiver were to be implemented, the Commission would need to determine, for example, whether the waiver would apply only to first-time 900 charges within a particular billing period or to the total owing when the dispute was first raised by the customer, if there would be a time limit for disputing charges, and if the waiver would apply to all 900 services.

175. The Commission notes that in support of their proposal for an automatic waiver, the Consumer Groups submitted that the Companies might be applying an unreasonably high standard in determining whether calls are reasonably disputed. The Commission notes that there is no evidence on the record of this proceeding that there are problems with the current

system of waiving reasonably disputed charges. The Commission is of the view that the evidence provided in this proceeding indicates that the Companies waive the majority of first-time disputed charges for 900 calls.

176. The Commission notes that the Consumer Groups submitted that the fact that a caller had never incurred 900 charges in the past and had not yet been informed of call blocking was proof enough of the reasonableness of the dispute. In the Commission's view, the particular facts of each dispute must be examined in order to determine whether the complaint is reasonable. The Commission notes that the test of reasonableness is used in many places in the Companies' Terms of Service, for example, in the provisions relating to disconnection of telephone service. The Commission considers that an automatic waiver provision could lead to the unacceptable result of having the Companies waive charges for unreasonably disputed complaints.

177. Further, the Commission considers that if it became generally known that first-time charges would be automatically waived in the event of a dispute, callers could choose to take advantage of the situation, making numerous 900 calls over the course of a particular billing period, or perhaps over several billing periods, with the intention of later disputing the charges in order to have them waived.

178. In light of the above, the Commission is of the view that the current chargeback provisions continue to provide appropriate compensation for calls that are reasonably disputed.

c) Notification of first-time 900 service charges that exceed $50

179. The Commission notes that the Companies submitted that the recovery of the costs associated with developing new routines and procedures to implement a notification process would be a concern for them. The Commission further notes that the costs involved in providing a notification process when 900 service charges exceed $50 are not known. The Commission considers that the procedures involved in determining 900 service charges incurred pursuant to the ABA agreement could be costly, as they would involve 900 service charges not billed by the Companies. The Commission notes the initiatives in this decision with respect to call blocking and waiver of charges, as well as those to better inform 900 service customers of rates and dispute resolution options.

180. In light of the above, the Commission considers that a requirement to notify customers of first-time 900 service charges that exceed $50 should not be adopted.

d) Requirement for callers to signal their desire to incur charges by way of a positive act

181. The Commission notes the Consumer Groups' submission that telephone callers should be required to signal their desire to incur 900 service charges by way of positive act, such as by pressing the pound key. In the Commission's view, dialling a 900 number and staying on the line after listening to the preamble, with its information about charges, are sufficient positive acts to signify the caller's intention to incur 900 service charges. Accordingly, the Commission considers that telephone callers should not have to signal their desire to incur charges by way of a positive act, beyond staying on the line and listening to the preamble.

4. Other requirements for 900 content service providers

182. The Commission notes that all 900 service carriers and 900 content service providers must comply with all applicable federal, provincial, and municipal laws and regulations.

a) Scratch and win type fraud

183. As noted, in TN 740 the Companies proposed changes to the wording of the SP and ARM agreements in order to prevent scratch and win type fraud, by prohibiting 900 service programs where the delivery of a prize or other benefit to the caller is or is represented to be conditional on the payment of any amount through a 900 service charge. In the Commission's view, the changes proposed by the Companies are consistent with the *Competition Act*, as amended, and do not undermine any other regulatory efforts to deal with the problem of scratch and win type frauds. The Commission considers that the proposed provisions would act as an additional protection against scratch and win type frauds. Accordingly, the Commission considers that the wording changes proposed by the Companies are appropriate.

b) Toll-free links to 900 services

184. The Commission is of the view that linking toll-free numbers to 900 services could result in callers being charged for 900 services without notice of such charges. To curtail this practice, the Commission is of the view that the SP agreement should explicitly state that the following practices are prohibited:

i) using toll-free numbers for pay-per-call services, unless the caller has a pre-existing agreement with the company or the call is charged to a credit card;

ii) connecting callers directly from a toll-free number to a 900 number; and

iii) collecting callbacks by 900 content service providers, where the customer has dialled a toll-free number first.

c) Use of 900 service programs by minors

185. With regard to CAC/MSOS' suggestion that safeguards for minors similar to those included in the FTC’s 900 Number Rule be implemented, the Commission considers that those concerns can be alleviated using the chargeback process, call blocking service, and a public awareness program that makes use of the Companies' websites and an annual billing insert.

d) References to other 900 service programs

186. In regard to the Consumer Groups' proposal to prohibit 900 content service providers from pressuring callers to use the service again or to call other 900 service programs, the Commission notes that the Consumer Groups stated that they were unaware of the extent to which such practices contributed to customer dissatisfaction with 900 service. The Commission also notes that the Companies stated that they were not aware of the extent to which this was a problem. The Commission considers that the evidence on the record of this proceeding does not establish that pressuring callers into making additional calls is a problem. In light of the above, the Commission is of the view that such a prohibition should not be adopted.

e) Collection practices reflecting industry standards

187. In regard to the Consumer Groups' proposal that the ARM agreement should incorporate the relevant provincial collection agency legislation and regulations, the Commission notes that there is no evidence on the record of this proceeding that suggests that inappropriate collection practices are a problem. In addition, the Commission notes that 900 service is a national service offering, and considers that it would be cumbersome to incorporate the provincial legislation for all of the provinces into the ARM agreement. The Commission notes that 900 content service providers are bound by all local laws, including applicable collections legislation, and are reminded of their obligations to abide by these laws in Article 3.1 of the SP agreement. Accordingly, the Commission considers that this proposal should not be adopted.

5. Extension of ARM agreement consumer safeguards to 900 content service providers using alternate billing arrangements

188. The Commission is of the view that the safeguards that are only contained in the ARM agreement, and therefore only apply when the 900 service carrier performs billing and collecting, should now be included in the SP agreement, and therefore apply to all 900 content service providers, regardless of the billing entity.

189. With regard to the Consumer Group's submission regarding the application of uniform consumer safeguards to all 976 content service providers, the Commission considers that this is outside the scope of this proceeding.

i) Waiver of disputed charges and call blocking

190. The Commission is of the view that the waiver of reasonably disputed charges for first-time disputes is a key safeguard for 900 service. Accordingly, the Commission considers it appropriate that the waiver measures related to reasonably disputed charges incurred before a customer has had the opportunity to avail herself or himself of call blocking for 900 service apply whether the 900 service carrier or the 900 content service provider is doing the billing.

191. The Commission also considers it appropriate to require 900 content service providers to advise customers who are disputing 900 service charges that they can have calls to 900 numbers blocked by making a request to their local telephone company. Again, the Commission is of the view that such a provision should not depend on the billing entity.

ii) Maximum charges

192. The Commission notes that the Consumer Groups suggested that the following ARM agreement provisions setting out maximum charges for certain types of 900 service programs should apply to 900 content service providers who do their own billing:

- maximum charges of $3 per call for persons under the age of 18;
- maximum charges of $5 per call for games of chance for profit;

- maximum charges of $6 per minute and $100 per call for HCPL programs; and

- maximum charges of $25 per call for subsequent value programs, as set out in Article 7.5(d) of the ARM agreement.

193. The Commission notes that the ARM agreement also contains provisions stating that, where not specified, maximum charges per call are $50 and that Business/Government Exchange Programs that have a business, government or registered charity focus are not subject to maximum charges.

194. The Commission notes that the ABA agreement contains a limit of $3 per call for programs intended for callers under 18, and a limit of $50 per call for other programs.

195. The Commission is of the view that 900 content service providers should be subject to the same maximum charge restrictions, regardless of their method of billing and considers that the maximum charge provisions set out in the ARM agreement should apply to all 900 content service providers through the SP agreement. The Commission notes that moving the maximum charge provisions to the SP agreement will result in lower maximum per call charges where 900 content service providers do the billing for games of chance for profit, subsequent value programs, and programs with a business, government or registered charity focus. The Commission also notes that the change will raise the maximum charge for HCPL programs under the ABA agreement from $50 to $100.

iii) Prohibition of repetitive scripts, long holding periods, etc.

196. The Consumer Groups proposed that the prohibition in the ARM agreement of 900 service programs that use repetitive scripts, long holding periods, extraneous verbiage or long downloading procedures as a means of prolonging the call should apply to all 900 content service providers. The Commission notes that Schedule C of the ARM agreement states that the Companies will not purchase the accounts receivable of a service provider for a 900 service program that uses such means to prolong the call.

197. As the Commission considers that such intentionally deceptive practices are unacceptable, regardless of the billing entity, it is of the view that this prohibition should be included in the SP agreement.

iv) Privacy

198. The Commission notes that the Companies did not object to the proposal to include in the SP agreement the privacy principles from Schedule D of the ARM agreement, but considered it unnecessary in light of existing provisions in the agreements. The Commission also notes that Schedule D of the ARM agreement sets out the principles for the protection of personal privacy intended to apply to those 900 content service providers that subscribe to the receipting option. Under the receipting option, registered charities are the 900 content service providers and callers can call a 900 number to make a donation, the amount of which will appear on the telephone bill. The Commission considers that including the privacy principles from Schedule D of the ARM agreement in the SP agreement would help to remind 900 content service providers of their obligations.

199. The Commission considers that the privacy principles should apply to all 900 content service providers. Therefore, the Commission considers that the SP agreement should include the list of principles for the protection of personal privacy from Schedule D of the ARM agreement revised by deleting reference to the receipting option, so that the principles as set out in Schedule D of the ARM agreement will apply to all 900 content service providers and all 900 services.

6. 900 service carrier restrictions

a) Disconnection of a customer's telephone service for failure to pay 900 service charges

200. The Commission notes the Consumer Groups' submission that consumers should not have their local or long distance service disconnected for failure to pay 900 service charges. The Commission notes, however, that there is no evidence on the record of this proceeding that the Companies engage in such practices. On the contrary, the Companies' evidence was that it was not their policy or practice to disconnect local or long distance service for failure to pay 900 service charges.

201. The Commission notes that in *Terms of Service – Disconnection for partial payment of charges*, Telecom Decision CRTC 2004-31, 11 May 2004, the Commission prohibited the Companies from suspending or disconnecting tariffed services, or from even threatening to do so, when the customer has paid enough to cover tariffed charges.

202. In light of the above, the Commission considers that the current rules respecting the disconnection of services for non-payment of charges are appropriate.

b) Limited liability

203. With respect to the proposal by CAC/MSOS to increase the Companies' liability, the Commission considers that it would not be appropriate to revise the provisions which limit the Companies' liability, since the Companies do not provision 900 program content and services. The Commission considers that it has not been demonstrated that the liability of the Companies should be increased.

c) Ensuring 900 services are lawful

204. With respect to the proposal by CAC/MSOS that the Companies take reasonable measures to ensure that the 900 services they offer to consumers are legal, the Commission notes that the Companies engage in initial program review and ongoing program monitoring to monitor 900 service. The Commission also notes that there are content guidelines attached to the ARM agreement, and non-compliance with the guidelines can be a reason for terminating the service. Accordingly, the Commission considers that it is not necessary for the Companies to take additional measures to ensure that the 900 services they offer to consumers are legal.

7. Complaints process and enforcement measures

a) Procedure for consumer complaints

205. With respect to CAC/MSOS' suggestion to apply a uniform procedure to all 900 content service providers for processing customer complaints and the Consumer Groups' suggestion that unresolved disputes be submitted to the Commission, the Commission notes that there is no

evidence on the record of this proceeding that the current complaint procedures for unresolved disputes related to 900 service charges are a problem. Without evidence of a problem at this time, it is the Commission's view that it would be inappropriate to single out 900 service disputes as a category to be addressed differently than any other category of service. The Commission considers that providing information in annual billing inserts and on the 900 service carriers' websites is sufficient to ensure that consumers are made aware that they may go to the Commission to seek resolution of an unresolved dispute with a 900 content service provider or a 900 service carrier.

b) Enforcement of consumer safeguards

206. The Commission notes that the Companies continue to monitor 900 service programs and to terminate 900 content service providers' 900 service for non-compliance with consumer safeguards. The Commission also notes that, upon receipt of a complaint, the processes in place allow the Commission to determine whether the disconnection of a 900 content service provider by a 900 service carrier was justified or not.

207. The Commission considers that disconnection orders made by the Commission are not likely to be more effective than the steps already being taken by the Companies to disconnect non-compliant 900 content service providers. As the Commission could only make a disconnection order after holding a process for receipt of submissions from affected parties, the Commission is of the view that the disconnection orders would likely take longer to implement than disconnection orders made by the Companies.

208. The Commission is of the view that prosecution of 900 content service providers is also unlikely to be an effective enforcement mechanism, as a criminal prosecution would be slower and more cumbersome, and would require the violation to be proven beyond a reasonable doubt, which would be a higher standard than that applicable in the case of a disconnection order.

209. Accordingly, the Commission considers that the Consumer Groups' proposals that the Commission make disconnection orders against 900 content service providers and prosecute violations of the SP agreement under section 73(2)(b) of the Act would not provide more effective protection to consumers.

V. Commission's determinations

210. In light of the above, the Commission approves TNs 740 and 741, with modifications as set out below. The Commission directs:

i) the Companies to modify the definition of "preamble" in the agreements to state that, for Internet-based 900 service applications, the preamble text in the dialogue box must be limited to a short, accurate and clear message; be easily legible (i.e., avoid unnecessary use of block and capital letters and no narrow spacing or faint print); use plain language (i.e., no uncommon words or phrasing); use 12-point font size; be displayed to the Internet user before the transfer occurs; and clearly indicate that by clicking on the "I Agree" box, or by otherwise clearly indicating their explicit consent, Internet users are agreeing to be charged for accessing a 900 service program.

ii) the Companies to modify the wording of Article 3.5 of the SP agreement, as proposed in TN 740, to remove the exception from advertising information requirements for telephone directory advertising.

iii) the Companies to remove the exception to the preamble rule for calls with a flat rate of $3 or less by deleting Article 3.4(d) of the SP agreement and any other references to the exception made in the agreements.

iv) the Companies to amend Article 3.4 of the SP agreement to state that the preamble must describe any alternate ways to enter into a sweepstake or a game of chance that do not involve calling a 900 number and incurring charges.

v) the Companies to amend the definition of "preamble" in the agreements to state that: (i) all possible rates and charges must be disclosed, including flat fees, per minute rates, minimum or maximum charges, and all of the different rates that may apply to various portions of a 900 service program; and (ii) if a 900 service call is transferred to another pay-per-call service, other charges will apply.

vi) the Companies to provide the following information on their websites within 90 days of the date of this decision and in annual billing inserts to all customers beginning September 2005 and every September thereafter: a reminder that parents should caution their children not to call 900 numbers without permission; a reminder that 900 services and long distance area codes beginning with an '8' are provided for a charge to consumers, unlike toll-free services; information about the availability of call blocking; and a statement that consumers may contact the Commission to seek resolution of the dispute in the event of an unresolved dispute with a 900 content service provider or a 900 service carrier. The Commission directs the Companies to use clear and concise language with a text of at least 12-point font size in the billing insert and on their websites, and to provide the annual insert in electronic format to customers who are billed via the Internet using the same clear, concise language and 12-point font size. The Companies are to file copies of the proposed billing inserts for the Commission's information at least 90 days before they are sent out to customers.

vii) the Companies to amend the SP agreement to require that for each 900 service call the bill is to set out the date, start time, duration, 900 number called, description of 900 program called, total charge for the call before taxes, and the total of all 900 service charges before taxes.

viii) the Companies, with respect to the changes proposed in TN 741, to revise Article 7.5(c) of the ARM agreement to reduce the maximum per minute charge for HCPL programs from $10 to $6, but to maintain the maximum per call charge for these 900 programs at $100.

ix) Bell Canada, MTS Allstream, Island Tel, MTT, and NBTel to remove the charge for initiating call blocking. TCI is directed to reduce its charge for subsequent requests to terminate or add call blocking from $18 to $10.

x) the Companies to amend the SP agreement to explicitly state that the following practices are prohibited with respect to linking toll-free and 900 numbers:

a. using toll-free numbers for pay-per-call services, unless the caller has a pre-existing agreement with the company or the call is charged to a credit card;

b. connecting callers directly from a toll-free number to a 900 number; and

c. collecting callbacks by 900 content service providers where the customer has dialled a toll-free number first.

xi) the Companies to amend the SP agreement to:

a. require 900 content service providers to waive all caller charges that are reasonably disputed and pertain to charges made before a caller has had the opportunity to initiate call blocking for 900 service;

b. state that where a caller disputes 900 charges, the 900 content service provider will provide information about the availability of call blocking service;

c. add the maximum charge provisions set out in the ARM agreement to all 900 content service providers. The maximum charge provisions should, consequently, be removed from the ARM and ABA agreements;

d. add the prohibition of 900 programs that use repetitive scripts, long holding periods, extraneous verbiage or long downloading procedures as a means of prolonging the call from the ARM agreement; and

e. add the list of principles for the protection of personal privacy from Schedule D of the ARM agreement, revised by deleting the reference to the receipting option so that the principles as set out in Schedule D of the ARM agreement will apply to all 900 content service providers and all 900 services. Consequently, the Companies are directed to delete Schedule D of the ARM agreement.

Secretary General

APPENDIX A

Description of Consumer Safeguards Prior to Decision 2005-19

a) **Preamble:** The preamble is the information, up to three minutes in length, provided by 900 service providers to callers at the beginning of each call to a 900 service program and before any program charges accrue. It provides callers with a description of the program, the charges and the name of the service provider. Callers can hang up and not incur any charges during the delivery of the preamble. A text preamble is required if the 900 service program operates using the Internet. In addition, if the program is intended for callers under 18 years of age, the preamble will inform them that they require parental permission. When a service provider bills using ABA, the preamble must identify the billing party and inform callers that the charges will not appear on the Companies' telephone bill. Prior to this decision, Article 3.4(d) of the SP agreement indicated that a preamble was not required where the charge for a call was a flat rate of $3 or less and the call did not involve a program that uses the receipting option or involve a number that is listed in a telephone directory or involve a program directed at callers under 18 years of age.

b) **Waiver of Reasonably Disputed Charges:** For first-time disputes, the Companies will waive all caller charges to 900 service programs that are reasonably disputed and pertain to calls made before the caller has had an opportunity to avail himself/herself of call blocking for 900 service. 900 content service providers are prohibited from making any attempt to collect the waived charges. The waived charges are absorbed by the 900 service provider by means of a debit to its account. The term "chargeback" means call charges that are waived by the Companies and absorbed by the 900 content service provider. For subsequent disputes, the Companies will waive any unpaid charges, but will provide relevant call detail information to the 900 content service provider, which can choose to pursue debt collection.

c) **Call Blocking:** Call blocking is available to all telephone customers who wish to restrict access from their telephone lines to 900 service numbers.

d) **Provide a Telephone Number for Inquiries:** The 900 content service provider must provide a toll-free number where it can be reached and where a caller can discuss issues pertinent to its 900 service program. Callers can try to resolve issues with the content service provider prior to complaining to the Companies or to the Commission.

e) **Consideration to Claim Prize:** The Companies will not approve a 900 service program where payment by a caller is required to claim a prize or obtain information about a prize.

f) **Abide by Municipal, Provincial and Federal Laws:** 900 content service providers must agree to abide by all municipal, provincial and federal laws.

g) **Fraud**: The Companies will not purchase the accounts receivable of 900 content service providers under the ARM agreement if, in the Companies' reasonable opinion, the 900 service programs are or could potentially be fraudulent, deceptive or misleading.

h) **Notice of ABA Billing:** The SP agreement specifies that the 900 content service provider, in its advertising and other communications, must inform callers of the identity of the billing party and that the charges will not appear on the Companies' telephone bill. The ABA agreement further requires that this information be included in the preamble, as noted above, so callers will know in advance that they will receive a bill directly from a 900 content service provider.

i) **No Direct Solicitation for High-Cap Psychic Line (HCPL) programs**: This clause prohibits 900 content service providers from contacting callers to solicit their business for future HCPL programs. Based on complaints from callers, the Companies could ultimately terminate billing and disconnect the 900 number associated with a 900 content service provider's program in the event of non-compliance.

j) **Caps on Charges:** Both the ARM and the ABA agreements stipulate caps on charges for specific 900 service programs. These caps establish the maximum amount a caller will be charged per call (in some cases, there are also limits on the amount that can be charged per minute). There is no cap on the total amount of charges from a given 900 service program that a specific caller can accrue through multiple calls.

k) **Privacy for Receipting Option:** This ensures that the 900 content service provider will respect the privacy wishes of the caller. The caller must be given an opportunity to decline to have their name or other information used for any further marketing purposes by a third party. The principles for the protection of personal privacy, enunciated in Schedule D of the ARM agreement, are those adopted by the Canadian Marketing Association for all direct marketers.

l) **Maximum Chargeback Levels:** If chargebacks attain a certain level as a percentage of total billing for a specific 900 service program, for a given period of time (i.e., three consecutive months), the Companies will terminate the program.

m) **Adult Programming:** The Companies will not purchase the accounts receivable of service providers for 900 service programs which offer sexual stimulation or arousal themes.

n) **Long Holding Times**: The Companies will not purchase the accounts receivable of service providers for 900 service programs which feature long holding times, repetitive scripts, extraneous verbiage or long downloading procedures as a means to prolong the call.

o) **Credit Information:** The Companies will not purchase the accounts receivable of service providers for 900 service programs that provide information about obtaining credit, loans, or credit cards, or improving one's credit record, credit history or credit rating.

p) **Employment Information:** The Companies will not purchase the accounts receivable of 900 content service providers for accounts which focus on offering information on generic employment descriptions or how to obtain employment.