

Federal Trade Commission

§ 308.7

(1) *Service bureau liability.* A service bureau shall be liable for violations of the rule by pay-per-call services using its call processing facilities where it knew or should have known of the violation.

§ 308.6 Access to information.

Any common carrier that provides telecommunication services to any provider of pay-per-call services shall make available to the Commission, upon written request, any records and financial information maintained by such carrier relating to the arrangements (other than for the provision of local exchange service) between such carrier and any provider of pay-per-call services.

§ 308.7 Billing and collection for pay-per-call services.

(a) *Definitions.* For the purposes of this section, the following definitions shall apply:

(1) *Billing entity* means any person who transmits a billing statement to a customer for a telephone-billed purchase, or any person who assumes responsibility for receiving and responding to billing error complaints or inquiries.

(2) *Billing error* means any of the following:

(i) A reflection on a billing statement of a telephone-billed purchase that was not made by the customer nor made from the telephone of the customer who was billed for the purchase or, if made, was not in the amount reflected on such statement.

(ii) A reflection on a billing statement of a telephone-billed purchase for which the customer requests additional clarification, including documentary evidence thereof.

(iii) A reflection on a billing statement of a telephone-billed purchase that was not accepted by the customer or not provided to the customer in accordance with the stated terms of the transaction.

(iv) A reflection on a billing statement of a telephone-billed purchase for a call made to an 800 or other toll free telephone number.

(v) The failure to reflect properly on a billing statement a payment made by the customer or a credit issued to the

customer with respect to a telephone-billed purchase.

(vi) A computation error or similar error of an accounting nature on a billing statement of a telephone-billed purchase.

(vii) Failure to transmit a billing statement for a telephone-billed purchase to a customer's last known address if that address was furnished by the customer at least twenty days before the end of the billing cycle for which the statement was required.

(viii) A reflection on a billing statement of a telephone-billed purchase that is not identified in accordance with the requirements of § 308.5(j).

(3) *Customer* means any person who acquires or attempts to acquire goods or services in a telephone-billed purchase, or who receives a billing statement for a telephone-billed purchase charged to a telephone number assigned to that person by a providing carrier.

(4) *Preexisting agreement* means a "presubscription or comparable arrangement," as that term is defined in § 308.2(e).

(5) *Providing carrier* means a local exchange or interexchange common carrier providing telephone services (other than local exchange services) to a vendor for a telephone-billed purchase that is the subject of a billing error complaint or inquiry.

(6) *Telephone-billed purchase* means any purchase that is completed solely as a consequence of the completion of the call or a subsequent dialing, touch tone entry, or comparable action of the caller. Such term does not include:

(i) A purchase by a caller pursuant to a preexisting agreement with a vendor;

(ii) Local exchange telephone services or interexchange telephone services or any service that the Federal Communications Commission determines by rule—

(A) Is closely related to the provision of local exchange telephone services or interexchange telephone services; and

(B) Is subject to billing dispute resolution procedures required by Federal or state statute or regulation; or

(iii) The purchase of goods or services that is otherwise subject to billing dispute resolution procedures required by Federal statute or regulation.

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(7) *Vendor* means any person who, through the use of the telephone, offers goods or services for a telephone-billed purchase.

(b) *Initiation of billing review.* A customer may initiate a billing review with respect to a telephone-billed purchase by providing the billing entity with notice of a billing error no later than 60 days after the billing entity transmitted the first billing statement that contains a charge for such telephone-billed purchase. If the billing error is the reflection on a billing statement of a telephone-billed purchase not provided to the customer in accordance with the stated terms of the transaction, the 60-day period shall begin to run from the date the goods or services are delivered or, if not delivered, should have been delivered, if such date is later than the date the billing statement was transmitted. A billing error notice shall:

(1) Set forth or otherwise enable the billing entity to identify the customer's name and the telephone number to which the charge was billed;

(2) Indicate the customer's belief that the statement contains a billing error and the type, date, and amount of such; and

(3) Set forth the reasons for the customer's belief, to the extent possible, that the statement contains a billing error.

(c) *Disclosure of method of providing notice; presumption if oral notice is permitted.* A billing entity shall clearly and conspicuously² disclose on each billing statement or on other material accompanying the billing statement the method (oral or written) by which the customer may provide notice to initiate review of a billing error in the manner set forth in §308.7(b). If oral notice is permitted, any customer who orally communicates an allegation of a billing error to a billing entity shall be presumed to have properly initiated a

²The standard for "clear and conspicuous" as used in this section shall be the standard enunciated by the Board of Governors of the Federal Reserve System in its Official Staff Commentary on Regulation Z, which requires simply that the disclosures be in a reasonably understandable form. See 12 CFR part 226, Supplement I, Comment 226.5(a)(1)–1.

billing review in accordance with the requirements of §308.7(b).

(d) *Response to customer notice.* A billing entity that receives notice of a billing error as described in §308.7(b) shall:

(1) Send a written acknowledgement to the customer including a statement that any disputed amount need not be paid pending investigation of the billing error. This shall be done no later than forty (40) days after receiving the notice, unless the action required by §308.7(d)(2) is taken within such 40-day period; and

(2)(i) Correct the billing error and credit the customer's account for any disputed amount and any related charges, and notify the customer of the correction. The billing entity also shall disclose to the customer that collection efforts may occur despite the credit, and shall provide the names, mailing addresses, and business telephone numbers of the vendor and providing carrier, as applicable, that are the subject of the telephone-billed purchase, or provide the customer with a local or toll-free telephone number that the customer may call to obtain this information directly. However, the billing entity is not required to make the disclosure concerning collection efforts if the vendor, its agent, or the providing carrier, as applicable, will not collect or attempt to collect the disputed charge; or

(ii) Transmit an explanation to the customer, after conducting a reasonable investigation (including, where appropriate, contacting the vendor or providing carrier),³ setting forth the reasons why it has determined that no

³If a customer submits a billing error notice alleging either the nondelivery of goods or services or that information appearing on a billing statement has been reported incorrectly to the billing entity, the billing entity shall not deny the assertion unless it conducts a reasonable investigation and determines that the goods or services were actually delivered as agreed or that the information was correct. There shall be a rebuttable presumption that goods or services were actually delivered to the extent that a vendor or providing carrier produces documents prepared and maintained in the ordinary course of business showing the date on, and the place to, which the goods or services were transmitted or delivered.

billing error occurred or that a different billing error occurred from that asserted, make any appropriate adjustments to the customer's account, and, if the customer so requests, provide a written explanation and copies of documentary evidence of the customer's indebtedness.

(3) The action required by § 308.7(d)(2) shall be taken no later than two complete billing cycles of the billing entity (in no event later than ninety (90) days) after receiving the notice of the billing error and before taking any action to collect the disputed amount, or any part thereof. After complying with § 308.7(d)(2), the billing entity shall:

(i) If it is determined that any disputed amount is in error, promptly notify the appropriate providing carrier or vendor, as applicable, of its disposition of the customer's billing error and the reasons therefor; and

(ii) Promptly notify the customer in writing of the time when payment is due of any portion of the disputed amount determined not to be in error, which time shall be the longer of ten (10) days or the number of days the customer is ordinarily allowed (whether by custom, contract or state law) to pay undisputed amounts, and that failure to pay such amount may be reported to a credit reporting agency or subject the customer to a collection action, if that in fact may happen.

(e) *Withdrawal of billing error notice.* A billing entity need not comply with the requirements of § 308.7(d) if the customer has, after giving notice of a billing error and before the expiration of the time limits specified therein, agreed that the billing statement was correct or agreed to withdraw voluntarily the billing error notice.

(f) *Limitation on responsibility for billing error.* After complying with the provisions of § 308.7(d), a billing entity has no further responsibility under that section if the customer continues to make substantially the same allegation with respect to a billing error.

(g) *Customer's right to withhold disputed amount; limitation on collection action.* Once the customer has submitted notice of a billing error to a billing entity, the customer need not pay, and the billing entity, providing carrier, or vendor may not try to collect, any por-

tion of any required payment that the customer reasonably believes is related to the disputed amount until the billing entity receiving the notice has complied with the requirements of § 308.7(d). The billing entity, providing carrier, or vendor are not prohibited from taking any action to collect any undisputed portion of the bill, or from reflecting a disputed amount and related charges on a billing statement, provided that the billing statement clearly states that payment of any disputed amount or related charges is not required pending the billing entity's compliance with § 308.7(d).

(h) *Prohibition on charges for initiating billing review.* A billing entity, providing carrier, or vendor may not impose on the customer any charge related to the billing review, including charges for documentation or investigation.

(i) *Restrictions on credit reporting—(1) Adverse credit reports prohibited.* Once the customer has submitted notice of a billing error to a billing entity, a billing entity, providing carrier, vendor, or other agent may not report or threaten directly or indirectly to report adverse information to any person because of the customer's withholding payment of the disputed amount or related charges, until the billing entity has met the requirements of § 308.7(d) and allowed the customer as many days thereafter to make payment as prescribed by § 308.7(d)(3)(ii).

(2) *Reports on continuing disputes.* If a billing entity receives further notice from a customer within the time allowed for payment under § 308.7(i)(1) that any portion of the billing error is still in dispute, a billing entity, providing carrier, vendor, or other agent may not report to any person that the customer's account is delinquent because of the customer's failure to pay that disputed amount unless the billing entity, providing carrier, vendor, or other agent also reports that the amount is in dispute and notifies the customer in writing of the name and address of each person to whom the vendor, billing entity, providing carrier, or other agent has reported the account as delinquent.

(3) *Reporting of dispute resolutions required.* A billing entity, providing carrier, vendor, or other agent shall report in writing any subsequent resolution of any matter reported pursuant to § 308.7(i)(2) to all persons to whom such matter was initially reported.

(j) *Forfeiture of right to collect disputed amount.* Any billing entity, providing carrier, vendor, or other agent who fails to comply with the requirements of §§ 308.7(c), (d), (g), (h), or (i) forfeits any right to collect from the customer the amount indicated by the customer, under § 308.7(b)(2), to be in error, and any late charges or other related charges thereon, up to \$50 per transaction.

(k) *Prompt notification of returns and crediting of refunds.* When a vendor other than the billing entity accepts the return of property or forgives a debt for services in connection with a telephone-billed purchase, the vendor shall, within seven (7) business days from accepting the return or forgiving the debt, either:

(1) Mail or deliver a cash refund directly to the customer's address, and notify the appropriate billing entity that the customer has been given a refund, or

(2) Transmit a credit statement to the billing entity through the vendor's normal channels for billing telephone-billed purchases. The billing entity shall, within seven (7) business days after receiving a credit statement, credit the customer's account with the amount of the refund.

(l) *Right of customer to assert claims or defenses.* Any billing entity or providing carrier who seeks to collect charges from a customer for a telephone-billed purchase that is the subject of a dispute between the customer and the vendor shall be subject to all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute that the customer could assert against the vendor, if the customer has made a good faith attempt to resolve the dispute with the vendor or providing carrier (other than the billing entity). The billing entity or providing carrier shall not be liable under this paragraph for any amount greater than the amount billed to the

customer for the purchase (including any related charges).

(m) *Retaliatory actions prohibited.* A billing entity, providing carrier, vendor, or other agent may not accelerate any part of the customer's indebtedness or restrict or terminate the customer's access to pay-per-call services solely because the customer has exercised in good faith rights provided by this section.

(n) *Notice of billing error rights—(1) Annual statement.* (i) A billing entity shall mail or deliver to each customer, with the first billing statement for a telephone-billed purchase mailed or delivered after the effective date of these regulations, a statement of the customer's billing rights with respect to telephone-billed purchases. Thereafter the billing entity shall mail or deliver the billing rights statement at least once per calendar year to each customer to whom it has mailed or delivered a billing statement for a telephone-billed purchase during the previous twelve months. The billing rights statement shall disclose that the rights and obligations of the customer and the billing entity, set forth therein, are provided under the federal Telephone Disclosure and Dispute Resolution Act. The statement shall describe the procedure that the customer must follow to notify the billing entity of a billing error and the steps that the billing entity must take in response to the customer's notice. If the customer is permitted to provide oral notice of a billing error, the statement shall disclose that a customer who orally communicates an allegation of a billing error is presumed to have provided sufficient notice to initiate a billing review. The statement shall also disclose the customer's right to withhold payment of any disputed amount, and that any action to collect any disputed amount will be suspended, pending completion of the billing review. The statement shall further disclose the customer's rights and obligations if the billing entity determines that no billing error occurred, including what action the billing entity may take if the customer continues to withhold payment of the disputed amount. Additionally, the statement shall inform the customer of the billing entity's obligation to forfeit

any disputed amount (up to \$50 per transaction) if the billing entity fails to follow the billing and collection procedures prescribed by §308.7 of this rule.

(ii) A billing entity that is a common carrier may comply with §308.7(n)(1)(i) by, within 60 days after the effective date of these regulations, mailing or delivering the billing rights statement to all of its customers and, thereafter, mailing or delivering the billing rights statement at least once per calendar year, at intervals of not less than 6 months nor more than 18 months, to all of its customers.

(2) *Alternative summary statement.* As an alternative to §308.7(n)(1), a billing entity may mail or deliver, on or with each billing statement, a statement that sets forth the procedure that a customer must follow to notify the billing entity of a billing error. The statement shall also disclose the customer's right to withhold payment of any disputed amount, and that any action to collect any disputed amount will be suspended, pending completion of the billing review.

(3) *General disclosure requirements.* (i) The disclosures required by §308.7(n)(1) shall be made clearly and conspicuously on a separate statement that the customer may keep.

(ii) The disclosures required by §308.7(n)(2) shall be made clearly and conspicuously and may be made on a separate statement or on the customer's billing statement. If any of the disclosures are provided on the back of the billing statement, the billing entity shall include a reference to those disclosures on the front of the statement.

(iii) At the billing entity's option, additional information or explanations may be supplied with the disclosures required by §308.7(n), but none shall be stated, utilized, or placed so as to mislead or confuse the customer or contradict, obscure, or detract attention from the information required to be disclosed. The disclosures required by §308.7(n) shall appear separately and above any other disclosures.

(o) *Multiple billing entities.* If a telephone-billed purchase involves more than one billing entity, only one set of disclosures need be given, and the bill-

ing entities shall agree among themselves which billing entity must comply with the requirements that this regulation imposes on any or all of them. The billing entity designated to receive and respond to billing errors shall remain the only billing entity responsible for complying with the terms of §308.7(d). If a billing entity other than the one designated to receive and respond to billing errors receives notice of a billing error as described in §308.7(b), that billing entity shall either: (1) Promptly transmit to the customer the name, mailing address, and business telephone number of the billing entity designated to receive and respond to billing errors; or (2) transmit the billing error notice within fifteen (15) days to the billing entity designated to receive and respond to billing errors. The time requirements in §308.7(d) shall not begin to run until the billing entity designated to receive and respond to billing errors receives notice of the billing error, either from the customer or from the billing entity to whom the customer transmitted the notice.

(p) *Multiple customers.* If there is more than one customer involved in a telephone-billed purchase, the disclosures may be made to any customer who is primarily liable on the account.

§308.8 Severability.

The provisions of this rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

§308.9 Rulemaking review.

No later than four years after the effective date of this Rule, the Commission shall initiate a rulemaking review proceeding to evaluate the operation of the rule.

PART 309—LABELING REQUIREMENTS FOR ALTERNATIVE FUELS AND ALTERNATIVE FUELED VEHICLES

Subpart A—General

Sec.
309.1 Definitions.