

ed, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

### § 5714. Definitions

For purposes of this subchapter:

(1) The term “pay-per-call services” has the meaning provided in section 228(i) of title 47, except that the Commission by rule may, notwithstanding subparagraphs (B) and (C) of section 228(i)(1) of title 47, extend such definition to other similar services providing audio information or audio entertainment if the Commission determines that such services are susceptible to the unfair and deceptive practices that are prohibited by the rules prescribed pursuant to section 5711(a) of this title.

(2) The term “attorney general” means the chief legal officer of a State.

(3) The term “State” means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(4) The term “Commission” means the Federal Trade Commission.

(Pub. L. 102-556, title II, §204, Oct. 28, 1992, 106 Stat. 4191; Pub. L. 104-104, title VII, §701(b)(1), Feb. 8, 1996, 110 Stat. 147.)

#### AMENDMENTS

1996—Par. (1). Pub. L. 104-104 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The term ‘pay-per-call services’ has the meaning provided in section 228 of title 47.”

#### SUBCHAPTER II—BILLING AND COLLECTION

### § 5721. Regulations

#### (a) In general

##### (1) Rules required

The Commission shall, in accordance with the requirements of this section, prescribe rules establishing procedures for the correction of billing errors with respect to telephone-billed purchases. The rules prescribed by the Commission shall also include provisions to prohibit unfair or deceptive acts or practices that evade such rules or undermine the rights provided to customers under this subchapter.

##### (2) Substantial similarity to credit billing

The Commission shall promulgate rules under this section that impose requirements that are substantially similar to the requirements imposed, with respect to the resolution of credit disputes, under the Truth in Lending and Fair Credit Billing Acts [15 U.S.C. 1601 et seq., 1666 et seq.].

##### (3) Treatment of rule

A rule issued under paragraph (1) shall be treated as a rule issued under section 57a(a)(1)(B) of this title.

#### (b) Rulemaking schedule and procedure

The Commission shall prescribe the rules under subsection (a) of this section within 270

days after October 28, 1992. Such rules shall be prescribed in accordance with section 553 of title 5.

#### (c) Enforcement

Any violation of any rule prescribed under subsection (a) of this section shall be treated as a violation of a rule under section 45 of this title regarding unfair or deceptive acts or practices. Notwithstanding section 45(a)(2) of this title, communications common carriers shall be subject to the jurisdiction of the Commission for purposes of this subchapter.

#### (d) Correction of billing errors and correction of credit reports

In prescribing rules under this section, the Commission shall consider, with respect to telephone-billed purchases, the following:

(1) The initiation of a billing review by a customer.

(2) Responses by billing entities and providing carriers to the initiation of a billing review.

(3) Investigations concerning delivery of telephone-billed purchases.

(4) Limitations upon providing carrier responsibilities, including limitations on a carrier’s responsibility to verify delivery of audio information or entertainment.

(5) Requirements on actions by billing entities to set aside charges from a customer’s billing statement.

(6) Limitations on collection actions by billing entities and vendors.

(7) The regulation of credit reports on billing disputes.

(8) The prompt notification of credit to an account.

(9) Rights of customers and telephone common carriers regarding claims and defenses.

(10) The extent to which the regulations should diverge from requirements under the Truth in Lending and Fair Credit Billing Acts [15 U.S.C. 1601 et seq., 1666 et seq.] in order to protect customers, and in order to be cost effective to billing entities.

(Pub. L. 102-556, title III, §301, Oct. 28, 1992, 106 Stat. 4191.)

#### REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsecs. (a)(2) and (d)(10), is title I of Pub. L. 90-321, May 29, 1968, 82 Stat. 146, as amended, which is classified generally to subchapter I (§1601 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

The Fair Credit Billing Act, referred to in subsecs. (a)(2) and (d)(10), is title III of Pub. L. 93-495, Oct. 28, 1974, 88 Stat. 1511, which is classified principally to part D (§1666 et seq.) of subchapter I of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title of 1974 Amendment note set out under section 1601 of this title and Tables.

### § 5722. Relation to State laws

#### (a) State law applicable unless inconsistent

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with, the laws of any State with respect to telephone

billing practices, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. The Commission is authorized to determine whether such inconsistencies exist. The Commission may not determine that any State law is inconsistent with any provision of this subchapter<sup>1</sup> if the Commission determines that such law gives greater protection to the consumer.

**(b) Regulatory exemptions**

The Commission shall by regulation exempt from the requirements of this subchapter any class of telephone-billed purchase transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this subchapter<sup>1</sup> or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement.

(Pub. L. 102-556, title III, §302, Oct. 28, 1992, 106 Stat. 4192.)

REFERENCES IN TEXT

This subchapter, referred to the last time in subsecs. (a) and (b), was in the original “this chapter” and was translated as reading “this title” meaning title III of Pub. L. 102-556, to reflect the probable intent of Congress because Pub. L. 102-556 does not contain chapters.

**§ 5723. Enforcement**

The Commission shall enforce the requirements of this subchapter. For the purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All the functions and powers of the Commission under that Act are available to the Commission to enforce compliance by any person with the requirements imposed under this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in that Act. The Commission may prescribe such regulations as are necessary or appropriate to implement the provisions of this subchapter.

(Pub. L. 102-556, title III, §303, Oct. 28, 1992, 106 Stat. 4192.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

**§ 5724. Definitions**

As used in this subchapter—

(1) The term “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—

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

(B) local exchange telephone services or interexchange telephone services or any service that the Federal Communications Commission determines, by rule—

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

(ii) is subject to billing dispute resolution procedures required by Federal or State statute or regulation; or

(C) the purchase of goods or services which is otherwise subject to billing dispute resolution procedures required by Federal statute or regulation.

(2) A “billing error” consists of any of the following:

(A) A reflection on a billing statement for a telephone-billed purchase which was not made by the customer or, if made, was not in the amount reflected on such statement.

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

(C) 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.

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

(E) 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.

(F) A computation error or similar error of an accounting nature on a statement.

(G) Failure to transmit the billing statement to the last known address of the customer, unless that address was furnished less than twenty days before the end of the billing cycle for which the statement is required.

(H) Any other error described in regulations prescribed by the Commission pursuant to section 553 of title 5.

(3) The term “Commission” means the Federal Trade Commission.

(4) The term “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.

(5) The term “vendor” means any person who, through the use of the telephone, offers goods or services for a telephone-billed purchase.

(6) The term “customer” means any person who acquires or attempts to acquire goods or services in a telephone-billed purchase.

(Pub. L. 102-556, title III, §304, Oct. 28, 1992, 106 Stat. 4193.)

<sup>1</sup> See References in Text note below.