

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Joint FCC/FTC Policy Statement)	File No. 00-72
For the Advertising of Dial-Around)	
And Other Long-Distance Services)	
To Consumers)	

POLICY STATEMENT

Adopted by the FCC: February 29, 2000

Released: March 1, 2000

Adopted by the FTC: February 23, 2000

By the Commissions: Commissioner Furchgott-Roth issuing a dissenting statement.

I. INTRODUCTION

1. In recent years there has been an explosion in competition and innovation in the telecommunications industry. Long-distance customers have reaped substantial benefits in the form of greater choice in deciding which carrier to use and a greater diversity in the prices charged for those calls. For example, dial-around (or "10-10") numbers allow consumers to bypass or "dial-around" their chosen long-distance carrier to get a better rate in certain circumstances. Consumers also can opt for calling plans that offer a fixed per-minute rate during certain hours or on particular days.

2. Numerous carriers, both large and small, promote their services through national television, print, and direct mail advertising campaigns. Because no one plan is right for everyone, advertising plays a critical role in informing consumers about the myriad choices in long-distance calling and, in the case of dial-around services, advertising is generally the only source of information consumers typically have before incurring charges. With accurate information, consumers benefit from being able to choose the particular carrier that meets their long-distance calling needs at the most economical price. However, if consumers are deceived by the advertising claims, they cannot make informed purchasing decisions and ultimately the growth of competition in the long-distance market will be stifled.

3. The proliferation of advertisements for dial-around numbers, long-distance calling plans, and other new telecommunications services, as well as an increase in the number of complaints regarding how these services are promoted, have raised questions about how the principles of truthful advertising apply in this dynamic marketplace. To address these questions the Federal Trade Commission and the Federal Communications Commission issue this Joint Policy Statement.

4. Section 201(b) of the Communications Act of 1934, as amended, requires that common carriers' "practices . . . for and in connection with . . . communications service, shall be just and reasonable, and any such . . . practice . . . that is unjust or unreasonable is hereby declared to be unlawful . . .".¹ The FCC has found that unfair and deceptive marketing practices by common carriers constitute unjust and unreasonable practices under section 201(b).² Principles of truth-in-advertising law developed by the FTC under Section 5 of the FTC Act³ provide helpful guidance to carriers regarding how to comply with section 201(b) of the Communications Act in this context.

5. The FTC's truth-in-advertising law can be boiled down to two common-sense propositions: 1) advertising must be truthful and not misleading; and 2) before disseminating an ad, advertisers must have adequate substantiation for all objective product claims.⁴ A deceptive ad is one that contains a misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances about a material fact.⁵ Material facts are those that are important to a consumer's decision to buy or use a product. Information pertaining to the central characteristics of the product or service is presumed material. The cost of a product or service is an example of an attribute presumed material.⁶

6. Advertisers are responsible for substantiating all objective express and implied claims that

¹ 47 U.S.C. § 201(b).

² *Business Discount Plan, Inc.* 14 FCC Rcd 340, 355-358 (1998); *AT&T Corp.*, 71 RR2d 775 (1992).

³ 15 U.S.C. § 45. Section 5 declares unlawful "unfair or deceptive acts or practices in or affecting commerce."

⁴ These principles are articulated in the FTC's Deception Policy Statement and Advertising Substantiation Policy Statement. See generally Federal Trade Commission Policy Statement on Deception, appended to *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 *et seq.* (1984) ("Deception Statement"); Advertising Substantiation Policy Statement, appended to *Thompson Medical Co.*, 104 F.T.C. 648, 839 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S.1086 (1987). The FTC also has authority to challenge unfair trade practices. An unfair practice is one that causes or is likely to cause

10. In issuing this Policy Statement, the FCC and the FTC hope to provide guidance for carriers who market long-distance service. As a matter of clarification, we note that this Policy Statement does not preempt existing state law.

II. DISCUSSION

A. MISREPRESENTATIONS IN ADVERTISEMENTS FOR LONG-DISTANCE CALLING SERVICES

11. As a general matter, advertisers are free to highlight whatever attribute of their products or services they choose—quality, convenience, customer service, availability, price, or other benefit. However, once an advertisement makes an implied or express objective claim that conveys a material representation to reasonable consumers, the advertiser is responsible for the truthfulness of the representation and for substantiating the representation, regardless of whether the advertiser intended to convey those messages to consumers. If a claim is false, a disclosure that provides contradictory information is unlikely to cure the deception.

Example # 1: The headline of a direct mail ad for a dial-around service reads, “All day. All night. All calls. 10¢ a minute.” In fact, the rate is applicable only for state-to-state calls after 7:00 p.m. and on weekends. Even an otherwise prominent disclosure to that effect will likely not be sufficient considering that the disclosure directly contradicts the express, and false, representations in the headline.

B. MATERIAL INFORMATION

13. The central characteristic touted in most long-distance advertising is price. As noted above, price representations are presumptively material to consumers. What matters to consumers is not just the per-minute rate, but rather how that rate, along with all additional fees and charges, will ultimately be reflected in the charges they see on their monthly phone bills.¹⁰ Therefore, advertisers should exercise the greatest care in ensuring the accuracy of their claims related to price, including the clear and conspicuous disclosure¹¹ of information such as minimum per-call charges, monthly fees, fees for additional minutes beyond the initial calling period, and other information that significantly affects the total charge of a particular call or calling plan or service.

Example #2 -- Minimum Charges: An advertisement conveys the message that long-distance calls cost 10¢ a minute. In fact, all calls are subject to a 50¢ minimum charge. Given that reasonable consumers would likely conclude from the “10¢ a minute” representation that a one-minute call would cost 10¢ and would not expect there to be a substantial additional charge, the advertiser’s failure to clearly and conspicuously disclose the minimum fee in the ad would likely be deceptive.

Example #3 -- Monthly Fees: An advertisement says that long-distance calls cost 10¢ a minute. In fact, the rate is 10¢ a minute, but there is a substantial additional charge (a monthly fee) that is not disclosed.

itself; users of those services must rely on the information contained in the ad as the basis for determining whether to choose a particular service. However, even if the use of an advertised service requires a consumer to interact further with the advertiser—for example, if a consumer must call a toll-free customer service number to switch to a different calling plan—it would still be deceptive if the advertisement failed to disclose significant restrictions necessary to qualify representations made in the ad.

Example #11 -- Use of Toll-Free Numbers: A television advertisement for a long-distance calling plan prominently features the phrase “10¢ a minute” as a graphic and in the narration read by the spokesperson. The ad gives a toll-free number

conveys to reasonable consumers.¹⁵

22. Ordinarily, a disclosure is “clear and conspicuous,” and therefore is effectively communicated, when it is displayed in a manner that is readily noticeable, readable and/or audible, and understandable to the audience to whom it is disseminated. Factors that the FTC considers in evaluating the effectiveness of disclosures include:

- ***the prominence of the qualifying information***, especially in comparison to the advertising representation itself;
- **the proximity and placement of the qualifying information** vis-a-vis the representation that it modifies;
- ***the absence of distracting elements***, such as text, graphics, or sound that may distract a consumer’s attention away from the disclosure; and
- ***the clarity and understandability of the text of the disclosure.***¹⁶

23. Reference to an existing regulatory scheme provides considerable guidance. In 1992 Congress passed the Telephone Disclosure and Dispute Resolution Act (“TDDRA”), directing the FCC

provider must “clearly and conspicuously” disclose in the advertisement the total cost of the call. If there is

Example # 13: In a 30-second television ad for a dial-

location between the two lines of text, it is unlikely that the disclosure of the monthly fee is sufficiently clear and conspicuous.

Example # 16: A dial-around company promotes its services via a three-page direct mail letter sent to consumers. The envelope includes a depiction of a nickel surrounded by the phrase “long-distance calls for just 5¢ a minute,” a depiction repeated on the first page of the letter. In fact, the 5¢ a minute rate is good only for state-to-state calls 20 minutes or longer. That information is prominently disclosed only on the last page of the letter. The disclosure of these material conditions on the third page of the letter would likely be ineffective.

Example # 17: In a 60-second television ad, a company wants to promote both its domestic and international dial-around service. In the first 50 seconds of the ad, the spokesperson refers to the company’s rate as “7¢ a minute” three times with an accompanying graphic. In the last 10 seconds of the ad, the spokesperson says, “And call 878-555-0000 to find out about our low international rates.” During the 10-second segment in which the spokesperson discusses the company’s international rates, the superscript appears “7¢ a minute rate applies after 7:00 p.m. Monday-Friday and all day weekends.” Given the lack of proximity between the “7¢ a minute” claim and the disclosure of the material time restriction, the superscript would likely not be considered clear and conspicuous.

Example # 18: A company wants to promote its international long-distance service by reducing its regular prices during a special promotional period. The print ad features the prominent headline, “Big holiday sale! Call between November 1, 2000, and December 31, 2000, and save on all international calls.” The ad also features a box listing ten foreign cities. The list, prominently headed “sale prices good through December 31, 2000” gives the cost per minute to each of the advertised cities. Considering the close proximity between the promotional per-minute rates and the prominently displayed information that the advertised rates are good only until December 31, 2000, the disclosure would likely be effective.

3. Absence of Distracting Elements

31. Even if a disclosure is large in size and long in duration, other elements of an advertisement may distract consumers so that they may fail to notice the disclosure. As the FTC has held, consumers may be “directed away from the importance of the qualifying phrase by the acts or statements of the

III. ORDERING CLAUSE

33. Accordingly, IT IS ORDERED THAT this Policy Statement IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

FEDERAL TRADE COMMISSION

Donald S. Clark
Secretary