

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1284

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10/3/03
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1284

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1284

House Industry, Business and Labor Committee

Conference Committee

Hearing Date January 28, 2003

| Tape Number | Side A | Side B | Meter # |
|-------------|--------|--------|-----------|
| 1 | | X | 1414-3807 |
| | | | |
| | | | |

Committee Clerk Signature *Beth Leier*

Minutes: **CHAIR KEISER:** Opened hearing on HB 1284

REP. KASPER: Described bill. This is a strict prohibition of telephone consumer profiling.

REP. KEISER: Will the penalty also apply to out-of-state companies? Rep. Kasper replied that most profiling would be within ND. We cannot reach out of state boundaries.

REP. JOHNSON: What about the information that is already out there? Can we do anything. Rep. Keiser replied that no, we cannot do anything about previous information.

REP. SEVERSON: Would our citizens lose out if other states can do it? Rep. Kasper noted that ND is a unique state and the citizens have made it clear that they want protection. This would eliminate unwanted calls. This bill does more good than bad.

REP. SEVERSON: Would this impact in-state telemarketers? Rep. Kasper replied that he does not know if we call out-of-state.

REP. EKSTROM: Why is this not under wiretap statutes? Rep. Kasper said he cannot speak to wiretap laws.

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Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number 1284

Hearing Date 1-28-03

DAN KUNTZ(Qwest Corp): Opposed with copies of federal regulations. Although Qwest is not opposed to protection, they are opposed to the bill because it is over broad and vague.

Federal law already does what the intent of the bill is, but is also inconsistent with federal regulations.

REP. ZAISER: Are there other exemptions from the restrictions Rep. Kasper is worried about?

Kuntz replied that he does not know. The attorneys deal with the specifics.

REP. ZAISER: How much information is used for marketing? Rules limit how Qwest limits their own marketing. Not sure what telemarketers get from Qwest, but they can get information from directory information.

REP. KASPER: Is there customer profiling within the subsidiaries of Qwest? Kuntz replied that he does not know beyond what the regulations say. If it is CPNI information, then they use it.

REP. EKSTROM: If someone is in violation of the regulation, what are the penalties? Kuntz did not know. Chair Keiser asked Kuntz to get the information to Rep. Thorpe, who is carrying the bill.

DAVID CROTHERS (ND Assoc. of Telephone Cooperatives): Said the bill is impractical because rural areas are unique. They have overlapping directories and fears this bill will prohibit that.

REP. SEVERSON: Do you have knowledge of customer profiling? Crothers replied that he is not aware of any and when he asked the independent companies, they assured him they do not do profiling.

CHAIR KEISER: Closed bill on HB 1284.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1284

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 2/04/03

| Tape Number | Side A | Side B | Meter # |
|-------------|--------|--------|-----------|
| 3 | | x | 36.0-41.3 |
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Committee Clerk Signature

Judith Hammer

Minutes: **Chairman Kelser** called for committee work on HB 1284.

Rep. Kasper stated that the utilities came in and made the case that this bill does not need to go forward. I regretfully move a **Do Not Pass**.

Rep. Froseth seconded the motion.

Results of the roll call voter were: **14-0-0**.

Rep. Thorpe will carry this on the floor.

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FISCAL NOTE
 Requested by Legislative Council
 01/28/2003

Bill/Resolution No.: HB 1284

1A. **State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

| | 2001-2003 Biennium | | 2003-2005 Biennium | | 2005-2007 Biennium | |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | | | |
| Expenditures | | | | | | |
| Appropriations | | | | | | |

1B. **County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

| 2001-2003 Biennium | | | 2003-2005 Biennium | | | 2005-2007 Biennium | | |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties | Cities | School Districts | Counties | Cities | School Districts | Counties | Cities | School Districts |
| | | | | | | | | |

2. **Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

Although the passage of this bill will have a fiscal impact, it is not possible at this time to predict the amount of the impact.

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

Although the passage of this bill will have a fiscal impact, it is not possible at this time to predict the amount of the impact.

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

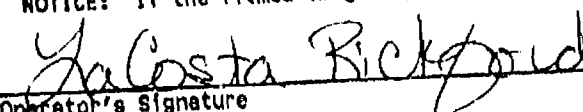
Although the passage of this bill will have a fiscal impact, it is not possible at this time to predict the amount of the impact.

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Although the passage of this bill will have a fiscal impact, it is not possible at this time to predict the amount of the impact.

| | | | |
|----------------------|-----------------------------|-----------------------|----------------------------|
| Name: | Parrell Grossman/Kathy Roll | Agency: | Office of Attorney General |
| Phone Number: | 701-328-3404/328-3622 | Date Prepared: | 01/31/2003 |

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Date: 2/4/03
 Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1284

House Industry, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Kasper Seconded By Froseth

| Representatives | Yes | No | Representatives | Yes | No |
|---------------------------|-----|----|-----------------|-----|----|
| Chairman Kelser | ✓ | | Rep. Boe | ✓ | |
| Rep. Severson, Vice-Chair | ✓ | | Rep. Ekstrom | ✓ | |
| Rep. Dosch | ✓ | | Rep. Thorpe | ✓ | |
| Rep. Froseth | ✓ | | Rep. Zaiser | ✓ | |
| Rep. Johnson | ✓ | | | | |
| Rep. Kasper | ✓ | | | | |
| Rep. Klein | ✓ | | | | |
| Rep. Nottlestad | ✓ | | | | |
| Rep. Ruby | ✓ | | | | |
| Rep. Tieman | ✓ | | | | |
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Total (Yes) 14 No 0

Absent _____

Floor Assignment Thorpe

If the vote is on an amendment, briefly indicate intent:

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La Costa Rickford 10/2/03
 Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
February 5, 2003 11:20 a.m.

Module No: HR-22-1698
Carrier: Thorpe
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1284: Industry, Business and Labor Committee (Rep. Kelsner, Chairman)
recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
HB 1284 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-22-1698

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10/3/03
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IP

2003 TESTIMONY

HB 1284

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TELEGRAPHS, TELEPHONES, ETC.

L. 103-414, § 304(a)(5), struck out", as a practicable," following "The Commission

NCES communications, 23 Am Jur Pl & Pr (Rev), Form 102.

and Treatises Programs, Services and Accommodations, 1 sub § 5:14.6.

ONS. sta of adverse judgments, and expenses in involving federal statutes, and had, to effect of its rules on various incentives carriers. Mountain States Tel. & Tel. Co. v. F.C.C., C.A.D.C.1991, 939 F.2d 1035, 291 U.S.App.D.C. 207.

companies 2), Feb. 8, 1996, 110 Stat. 143

cf (b) to (d)) (X2), 110 Stat. 143.)

ORY NOTES notification of State Governor and State seion, public hearing, and certification.

ORTS

ICES review and Journal Commentaries icans with Disabilities Act: An overview employment provisions. Thomas S. pper and Charles M. Rice, 33 S. Tex. 769 (1992).

TELEGRAPHS, TELEPHONES, ETC.

Texts and Treatises Business and Commercial Litigation in Federal Courts §§ 53.7, 62.3 (Robert L. Haig ed.) (West Group & ABA 1998).

HB 1284 47 § 222
Dun Kuntz, Quest

Jurisdictional separation Generally 3b Revenues and expenses 3c Mandatory nature of section 3a Revenue adjustments, state jurisdiction over services 10a Revenue requirement 14 Revenues and expenses, jurisdictional separation 3c State jurisdiction over services Revenue adjustments 10a

3a. Mandatory nature of section Communication Act provisions for allocating costs between interstate and intrastate uses, in formulated service rates, are mandatory when commission chooses to adopt formal methodology for achieving separations of costs; nonetheless when commission divides regulated area with states without resort to statutory formality, then employment of statutory method is not, by its own terms, mandatory. Crockett Telephone Co. v. F.C.C., C.A.D.C.1992, 963 F.2d 1564, 295 U.S.App.D.C. 397.

3b. Jurisdictional separation—Generally To implement scheme of federal and state dual regulation of wire and radio communication, process of apportionment known as "jurisdictional separation" requires that utility's revenues, investment, and expenses be apportioned between interstate and intrastate jurisdiction. Pine Tree Tel. & Tel. Co. v. Public Utilities Com'n, Me.1993, 631 A.2d 57.

3c. — Revenues and expenses Although virtually all telephone equipment and plant used to provide intrastate communications service is also used to provide interstate services, separation of intrastate and interstate property, revenues and expenses of telephone company is essential to appropriate recognition of competent governmental authority in each field of regulation. Pine Tree Tel. & Tel. Co. v. Public Utilities Com'n, Me.1993, 631 A.2d 57.

4. State jurisdiction over services—Generally Authority to regulate intrastate communications services remains with the several states, rather than with federal government. Pine

§ 222. Privacy of customer information

(a) In general Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.

(b) Confidentiality of carrier information A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such

NOTES OF DECISIONS Tree Tel. & Tel. Co. v. Public Utilities Com'n, Me.1993, 631 A.2d 57.

Mobile radio systems Fields v. Davis, Or.App.1977, 571 P.2d 511, (main volume) 31 Or.App. 607, review denied.

10. — Rates Public Utilities Commission's (PUC) use of residual ratemaking to determine which costs incurred by independent telephone company were attributable to intrastate services did not violate state prohibition against cross-subsidization by using revenues generating from interstate customers to benefit intrastate customers, rather, PUC properly relied on federally determined interstate average schedules as proxy to determine telephone company's interstate costs. Pine Tree Tel. & Tel. Co. v. Public Utilities Com'n, Me.1993, 631 A.2d 57.

10a. — Revenue adjustments In decision requiring independent telephone company to reduce its revenues, Public Utilities Commission (PUC) did not impermissibly include telephone company's interstate billing and collection revenues in company's total revenues, since company's revenues from interstate billing and collection services were not separated from its regulated activities prior to jurisdictional separations of company's interstate from intrastate revenues and expenses, and company chose to use average schedules rather than cost-based jurisdictional separation. Pine Tree Tel. & Tel. Co. v. Public Utilities Com'n, Me.1993, 631 A.2d 57.

13. Specific justification of amounts Illinois Bell Telephone Co. v. F.C.C., C.A.D.C. 1990, 911 F.2d 776, (main volume) 286 U.S.App. D.C. 34, decided after remand, petition denied 968 F.2d 1254, 300 U.S.App.D.C. 296.

14. Revenue requirement Telephone company's "revenue requirement" is total amount that carrier is entitled to charge for its services, and is sum of carrier's current operating expenses, including taxes and depreciation expenses, and return on its investment rate base. Pine Tree Tel. & Tel. Co. v. Public Utilities Com'n, Me.1993, 631 A.2d 57.

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information only for such purpose, and shall not use such information for its own marketing efforts.

(c) Confidentiality of customer proprietary network information

(1) Privacy requirements for telecommunications carriers

Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.

(2) Disclosure on request by customers

A telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer.

(3) Aggregate customer information

A telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service may use, disclose, or permit access to aggregate customer information other than for the purposes described in paragraph (1). A local exchange carrier may use, disclose, or permit access to aggregate customer information other than for purposes described in paragraph (1) only if it provides such aggregate information to other carriers or persons on reasonable and nondiscriminatory terms and conditions upon reasonable request therefor.

(d) Exceptions

Nothing in this section prohibits a telecommunications carrier from using, disclosing, or permitting access to customer proprietary network information obtained from its customers, either directly or indirectly through its agents—

- (1) to initiate, render, bill, and collect for telecommunications services;
- (2) to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services;
- (3) to provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call, if such call was initiated by the customer and the customer approves of the use of such information to provide such service; and
- (4) to provide call location information concerning the user of a commercial mobile service (as such term is defined in section 332(d) of this title)—
 - (A) to a public safety answering point, emergency medical service provider or emergency dispatch provider, public safety, fire service, or law enforcement official, or hospital emergency or trauma care facility, in order to respond to the user's call for emergency services;
 - (B) to inform the user's legal guardian or members of the user's immediate family of the user's location in an emergency situation that involves the risk of death or serious physical harm; or
 - (C) to providers of information or database management services solely for purposes of assisting in the delivery of emergency services in response to an emergency.

(e) Subscriber list information

Notwithstanding subsections (b), (c), and (d) of this section, a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.

(f) Authority to use wireless

For purposes of subsection (c), a customer shall not be considered a customer, a customer shall not be considered a customer, or access to—

- (1) call location information (as such term is defined in subsection (d)(4)); or
- (2) automatic crash not the operation of an autom

(g) Subscriber listed and unl

Notwithstanding subsection (c), a telecommunications carrier that provides telephone exchange service (including information unpublished) that is in its possession or control shall provide subscribers of other carriers) (and reasonable rates, terms, and conditions) to providers of emergency support the delivery of emergency serv

(h) Definitions

As used in this section:

(1) Customer proprietary

The term "customer proprietary information" means information that identifies the destination, location, or other characteristics of a customer relationship, including information that is made available to the customer relationship; (B) information concerning a service or telephone to which access is not except that such term does

(2) Aggregate information

The term "aggregate customer information" means information that identifies a group or category of customers and characteristic

(3) Subscriber list information

The term "subscriber list information" means information that identifies the subscribers' telephone numbers (as such classifications service), or any combination of such information; and (B) that the carrier has accepted for publication

(4) Public safety answering point

The term "public safety answering point" means a service used to receive emergency calls

(5) Emergency services

The term "emergency services" means notification services

(6) Emergency notification

The term "emergency notification" means notification of an emergency.

Lu Costa Rickford
Operator's Signature

10/3/03
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PHONES, ETC.

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TELEGRAPHS, TELEPHONES, ETC.

47 § 222

(f) Authority to use wireless location information

For purposes of subsection (c)(1), without the express prior authorization of the customer, a customer shall not be considered to have approved the use or disclosure of or access to—

- (1) call location information concerning the user of a commercial mobile service (as such term is defined in section 332(d) of this title), other than in accordance with subsection (d)(4); or
- (2) automatic crash notification information to any person other than for use in the operation of an automatic crash notification system.

(g) Subscriber listed and unlisted information for emergency services

Notwithstanding subsections (b), (c), and (d), a telecommunications carrier that provides telephone exchange service shall provide information described in subsection (i)(3)(A) (including information pertaining to subscribers whose information is unlisted or unpublished) that is in its possession or control (including information pertaining to subscribers of other carriers) on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions to providers of emergency services, and providers of emergency support services, solely for purposes of delivering or assisting in the delivery of emergency services.

(h) Definitions

As used in this section:

(1) Customer proprietary network information

The term "customer proprietary network information" means—

(A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and

(B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information.

(2) Aggregate information

The term "aggregate customer information" means collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed.

(3) Subscriber list information

The term "subscriber list information" means any information—

(A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and

(B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

(4) Public safety answering point

The term "public safety answering point" means a facility that has been designated to receive emergency calls and route them to emergency service personnel.

(5) Emergency services

The term "emergency services" means 9-1-1 emergency services and emergency notification services.

(6) Emergency notification services

The term "emergency notification services" means services that notify the public of an emergency.

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(7) Emergency support services

The term "emergency support services" means information or data base management services used in support of emergency services.

(June 19, 1934, ch. 652, Title II, § 222, as added Feb. 8, 1996, Pub.L. 104-104, Title VII, § 702, 110 Stat. 148, and amended Oct. 26, 1999, Pub.L. 106-81, § 5, 118 Stat. 1288.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports. Subsec. (h)(1)(A). Pub.L. 106-81, § 5(3), inserted "location" after "destination". 1996 Acts. House Report No. 104-204 and House Conference Report No. 104-458, see 1996 U.S. Code Cong. and Adm. News, p. 10. Subsec. (h)(4) to (7). Pub.L. 106-81, § 5(4), added pars. (4) to (7).

1999 Acts. Statement by President, see 1999 U.S. Code Cong. and Adm. News, p. 242.

Prior Provisions

A prior section 222, Act June 19, 1934, c. 652, Title II, § 222, as added Mar. 6, 1943, c. 10, § 1, 57 Stat. 5, and amended July 12, 1960, Pub.L. 86-624, § 36, 74 Stat. 421; Nov. 30, 1974, Pub.L. 93-506, § 2, 88 Stat. 1577; Dec. 24, 1980, Pub.L. 96-590, § 4, 94 Stat. 3414; Dec. 29, 1981, Pub.L. 97-130, § 2, 95 Stat. 1687, relating to competition among record carriers, was repealed by Pub.L. 103-414, Title III, § 304(a)(6), Oct. 25, 1994, 108 Stat. 4297.

Amendments

1999 Amendments. Subsec. (d). Pub.L. 106-81, § 5(1), struck out "or" at the end of par. (2), struck out the period at the end of par. (3) and inserted "; and", and added par. (4).

Subsec. (f). Pub.L. 106-81, § 5(2), redesignated former subsec. (f) as subsec. (h) and added new subssecs. (i) and (g).

LIBRARY REFERENCES

Texts and Treatises

Business and Commercial Litigation in Federal Courts § 53.7 (Robert L. Haig ed.) (West Group & ABA 1996).

§ 223. Obscene or harassing telephone calls in the District of Columbia or in interstate or foreign communications

(a) Prohibited general purposes

Whoever—

(1) in interstate or foreign communications—

(A) by means of a telecommunications device knowingly—

(i) makes, creates, or solicits, and

(ii) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene, lewd, lascivious, filthy, or indecent, with intent to annoy, abuse, threaten, or harass another person;

(B) by means of a telecommunications device knowingly—

(i) makes, creates, or solicits, and

(ii) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene or indecent, knowing that the recipient of the communication is under 18 years of age, regardless of whether the maker of such communication placed the call or initiated the communication;

(C) makes a telephone call or utilizes a telecommunications device, whether or not conversation or communication ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number or who receives the communications;

(D) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

(E) makes repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication; or

(2) knowingly permits any device to be used for any activity prohibited by this section, shall be fined under Title 18, or imprisoned not more than 5 years, or both.

(b) Prohibited commercial purposes

(1) It is a defense to prosecution under this section if the defendant restricted access to the device in accordance with subsection (a) and the Commission may prescribe by regulation the manner in which such restriction shall be implemented. (See main v)

(8) It is a defense to prosecution under this section if the defendant restricted access to the device in accordance with subsection (a) and the Commission may prescribe by regulation the manner in which such restriction shall be implemented. (See main v)

(d) Sending or displaying offenses

Whoever—

(1) in interstate or foreign communication—

(A) uses an interactive computer service to transmit to a person under 18 years of age—

(B) uses any interactive computer service to transmit to a person under 18 years of age—

any comment, request, suggestion, image, or other communication that is obscene, lewd, lascivious, filthy, or indecent, with intent to annoy, abuse, threaten, or harass another person; or

(2) knowingly permits any device to be used for any activity prohibited by this section, shall be fined under Title 18, or imprisoned not more than 5 years, or both.

(e) Defenses

In addition to any other defenses available to a person charged with a violation of this section—

(1) No person shall be held liable solely for providing access to or not under that person's control, storage, access software, or other means of such access or connection to a communication.

(2) The defenses provided in this section shall be applicable to a person who is the creator or knowing distributor of such material, knowingly advertises the availability of such material, or otherwise promotes such material.

(3) The defenses provided in this section shall be applicable to a person who provides network access to a person who is the creator or knowing distributor of such material, or otherwise promotes such material.

(4) No employer shall be held liable for the conduct of an employee or agent unless the employer or agent authorized or ratified such conduct.

(5) It is a defense to a prosecution under this section, or under subsection (a) or (b), for an activity under subsection (a) or (b) if the defendant has taken, in good faith, under the circumstances, such measures to restrict minors from access to such material as is feasible under available technology.

Operator's Signature *La Costa Rickford*

Date *10/3/03*