

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

In the Matter of)	
)	File No. ENF 98-02
Business Discount Plan, Inc.)	
)	NAL/Acct. No. 916EF0004
Apparent Liability for Forfeiture)	

ORDER ON RECONSIDERATION

Adopted: December 1, 2000;

Released: December 7, 2000

By the Commission: Commissioner Furchtgott-Roth concurring in part, dissenting in part, and issuing a separate statement.

I. INTRODUCTION

1. In this Order, we deny in part and grant in part a Petition for Reconsideration (“Petition”) filed by Business Discount Plan, Inc. (“BDP”). BDP requests that the Commission review its July 17, 2000 Order of Forfeiture,¹ which imposed a forfeiture of \$2,400,000 against BDP for willful or repeated violations of sections 201(b)² and 258³ of the Communications Act of 1934, as amended (the “Act”), and our related rules and orders. In the *Forfeiture Order*, the Commission found that BDP had willfully or repeatedly violated section 258 by changing the preferred interexchange carriers (“PICs”) designated by 30 consumers without their authorization, a practice commonly referred to as “slamming.” Additionally, we determined that BDP, in effecting these 30 unauthorized PIC changes, had willfully or repeatedly violated section 201(b) by using unjust and unreasonable telemarketing practices, such as misrepresenting the nature of BDP’s service offering. In its Petition, BDP asks the Commission to reduce the amount of the forfeiture assessed for the section 201(b) and 258 violations.

¹ *Business Discount Plan, Inc.*, Order of Forfeiture, 15 FCC Rcd 14461 (2000) (*Forfeiture Order*).

² Section 201(b) provides in pertinent part that “all charges, practices, classifications, and regulations for and in connection with communication service shall be just and reasonable . . .” 47 U.S.C. § 201(b).

³ Section 258 provides in pertinent part that “no telecommunications carrier shall submit . . . a change in a subscriber’s selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.” 47 U.S.C. § 258.

II. BACKGROUND

2. Between December 1997 and October 1998, the Commission processed thousands of written consumer complaints alleging slamming and unreasonable telemarketing practices by BDP.⁴ Following an investigation of 30 of these complaints, the Commission issued the *BDP NAL*,⁵ which concluded that BDP's failure to obtain the complainants' authorization prior to submitting PIC-change requests apparently violated section 258 and the Commission's rules and orders against slamming. Further, we determined that BDP's use of unjust and unreasonable telemarketing practices in connection with these unauthorized conversions apparently violated section 201(b) of the Act. Accordingly, we found that BDP was apparently liable for a proposed forfeiture of \$40,000 for each of the 30 unauthorized conversions, and an additional \$40,000 for each instance in which BDP employed unjust and unreasonable telemarketing practices, resulting in a total forfeiture amount of \$2,400,000.⁶ BDP filed a response, contesting the Commission's findings of apparent liability under sections 201(b) and 258, as well as the amount of the proposed forfeiture. We rejected each of these arguments in the *Forfeiture Order*, and determined that the record before us justified the proposed forfeiture.⁷

3. On August 16, 2000, BDP filed the instant Petition for Reconsideration with the Commission. In its Petition, BDP reiterates its earlier arguments that the Commission lacks jurisdiction under section 201(b) over unjust and unreasonable telemarketing practices, and that the assessed forfeiture is disproportionate to the alleged offense. BDP further contends that the *Forfeiture Order* relies on evidence that fails to meet the proper standard for assessing forfeitures pursuant to section 503(b) of the Act. As discussed below, we deny in part and grant in part BDP's Petition.

III. DISCUSSION

4. Reconsideration is appropriate only where the petitioner either shows a material error or omission in the original order or raises additional facts not known or existing until after the petitioner's last opportunity to present such matters.⁸ A petition that simply repeats arguments previously considered and rejected will be denied.⁹ As set forth below, review of BDP's petition for reconsideration and the *Forfeiture Order* reveals that the Commission has already considered and rejected many of the arguments contained in BDP's Petition.

⁴ See Common Carrier Scorecard, Federal Communications Commission, Jan. 1999 edition, at 14.

⁵ *Business Discount Plan, Inc.*, Notice of Apparent Liability for Forfeiture, 14 FCC Rcd 340 (1998) (*BDP NAL*).

⁶ *BDP NAL*, 14 FCC Rcd at 342.

⁷ *Forfeiture Order*, 15 FCC Rcd at 14473.

⁸ *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966); 47 C.F.R. § 1.106 (b)(2) (C).

⁹ *Bennett Gilbert Gaines*, 8 FCC Rcd 3986, 3987 (Rev. Bd. 1993).

A. Section 201(b) Authority

5. BDP contends that the Commission's *Forfeiture Order* "ignores or fails to address" statutory and other precedents showing that the Commission lacks jurisdiction under section 201(b) of the Act over fraudulent and deceptive telemarketing and advertising practices.¹⁰ As in its Response to the *NAL*, BDP maintains that a line of state preemption cases establishes that section 201(b) does not provide a cause of action for addressing the reasonableness of common carriers' deceptive telemarketing practices.¹¹ BDP also challenges the Commission's reliance on earlier Commission proceedings in which we exercised our section 201(b) jurisdiction.¹² Further, BDP asserts that we were barred from acting under section 201(b) in this instance because the Federal Trade Commission ("FTC") has sole jurisdiction over the telemarketing and advertising practices of common carriers.¹³

6. As an initial matter, the Commission's *Forfeiture Order* previously considered and rejected BDP's reliance on state preemption analyses to support its jurisdictional argument.¹⁴ These state preemption cases involved situations in which the courts held that the Communications Act does not indicate a "uniquely federal interest" in common carriers' unfair and deceptive telemarketing practices, so as to "preempt" state efforts to prevent these practices.¹⁵ In the *Forfeiture Order*, we stated that *even if* the Commission lacks a "uniquely federal interest" in preventing slamming and deceptive marketing practices, BDP presented no evidence or arguments to persuade us that the Commission therefore lacks authority to declare a deceptive marketing practice "unjust and unreasonable" under section 201(b) and to issue a forfeiture based on the unlawful conduct. Hence, we concluded that the Commission need *not* have a "uniquely federal interest" in preventing deceptive marketing practices in order to exercise its section 201(b) jurisdiction over "unjust and unreasonable" practices by common carriers "in connection with" communication service.¹⁶ We now reiterate that even though the states share our interest in preventing slamming and deceptive marketing practices, we are not barred from attacking these fraudulent practices with weapons in our own arsenal – such as section 201(b) of the Communications Act.¹⁷

7. Nor do we accept BDP's argument that we erred in finding support in earlier Commission proceedings that invoked section 201(b) to address common carriers' unreasonable

¹⁰ BDP Petition for Reconsideration (Petition) at 6.

¹¹ Petition at 7-13.

¹² Petition at 7-8.

¹³ Petition at 8-11.

¹⁴ *Forfeiture Order*, 15 FCC Rcd at 14468-69.

¹⁵ *See, e.g., Marcus v. AT&T Corp.*, 938 F.Supp. 1158, 1168 (S.D.N.Y. 1996).

¹⁶ 47 U.S.C. § 201(b).

¹⁷ We note that the Commission exercised jurisdiction over slamming under section 201(b) long before Congress enacted section 258.

marketing practices. We disagree with BDP's claim that these proceedings are irrelevant because "[n]either of these decisions hold that the parties had allegedly engaged in fraudulent practices."¹⁸

To the contrary, the *TRAC Decision*¹⁹ demonstrates that long before the instant proceeding, the Commission's Common Carrier Bureau recognized that section 201(b) provided a cause of action against several common carriers who had engaged in fraudulent business practices, such as "failing to convey sufficient information as to the carriers' identity, rates, practices, and range of services."²⁰ And although the Commission stopped short of finding a section 201(b) violation in the *AT&T* proceeding,²¹ it nevertheless cited the statutory provision in admonishing AT&T about fraudulent credit card marketing practices that had created significant consumer confusion.²²

8. Likewise, we reject BDP's claim that we could not exercise our section 201(b) authority in this instance because: 1) Congress did not refer specifically to "telemarketing practices" when it granted the Commission authority over "unjust and unreasonable practices" in section 201(b) of the original Communications Act of 1934; and 2) Congress has not amended section 201(b) to specifically include "fraudulent telemarketing practices." Neither of these observations shows that the Commission lacks authority over fraudulent telemarketing practices under the "unjust and unreasonable practices" standard in section 201(b). Congress gave the Commission broad authority over unjust and unreasonable practices "for and in connection with communication services."²³ In enacting section 201(b), Congress did not enumerate or otherwise limit the specific practices to which this provision applies. Instead, it granted us a more general authority to address such practices as they might arise in a changing telecommunications marketplace.

9. We also reject BDP's argument that Congress, in enacting the Telephone Disclosure and Dispute Resolution Act ("TDDRA"),²⁴ "must have recognized that the FCC did not have authority to regulate telemarketing and advertising under the Communications Act, because in approving this new public law, Congress expressly granted authority to the FTC to regulate communication common carriers' telemarketing and advertising activities in connection with pay-per-call services."²⁵ First, this argument is a logical *non sequitur*. The grant of authority to the FTC indicates nothing about the FCC's own authority. Moreover, the FTC was not directed to regulate the activities of common carriers; rather, it was directed to regulate those

¹⁸ Petition at 8.

¹⁹ *Telecommunications Research and Action Center and Consumer Action v. Central Corp. et al.*, 4 FCC Rcd 2157, 2158 (Com.Car. Bur. 1989)(*TRAC Decision*).

²⁰ *See id.*

²¹ *AT&T*, 71 RR2d 775 (1992).

²² *Forfeiture Order*, 15 FCC Rcd at 14469.

²³ 47 U.S.C. § 201(b).

²⁴ Pub. L. No. 102-556, 106 Stat. 4181 (codified at 47 U.S.C. § 228 and 15 U.S.C. § 5711 *et seq.*).

²⁵ Petition at 10-11.

who advertise and sell services offered on a pay-per-call basis.²⁶ Thus, the FTC's role under the TDDRA is irrelevant to the FCC's role in regulating common carrier practices.

B. Supporting Evidence for Assessment of a Forfeiture Under Section 503(b)

10. BDP next argues that the *Forfeiture Order* relies on “incompetent evidence” that does not meet the “proper legal standard” for assessing a forfeiture pursuant to section 503(b) of the Act.²⁷ As explained below, upon further review we have decided to reduce the amount of the forfeiture to reflect the fact that some of the inferences drawn from the evidence cannot fairly be supported.

11. The Commission's *Forfeiture Order* was based on numerous pieces of evidence, including 30 written consumer complaints²⁸ against BDP.²⁹ Of the 30 written complaints in the record, 15³⁰ were filed by consumers who did not recall having had any contact with BDP prior to discovering unauthorized long distance charges from BDP on their telephone bills.³¹ Accordingly, while there is ample direct evidence in the record showing that BDP slammed these 15 customers, there is no such direct evidence showing that BDP deceived these 15 consumers about the nature

²⁶ See House Report No. 102-430, Feb. 5, 1992 (“Title II [of TDDRA] directs the Federal Trade Commission (FTC) to prescribe rules for any advertisement of services or products procured through the use of pay-per-call technology.”) 15 U.S.C. § 5711(a). In reporting on a predecessor pay-per-call bill, the Senate Commerce Committee stated that, “[t]he term ‘provider of pay-per-call service’ excludes common carriers that merely transmit such service or provide billing and collection for such services [I]t is not the intention of the Committee to include telephone companies in the definition of ‘provider of pay-per-call service’ when a telephone company is serving only as the carrier of the information service or provider of billing service and does not control the content of the information provided.” S. Rep. No. 102-190 at 27, 102nd Cong. 1st Sess. 137 Cong. Rec. (daily ed. Oct. 16, 1991). The Committee also commented, “It is important to note that generally neither the local telephone company nor the long-distance company provide the information; the telephone company provides the telephone lines and billing but has traditionally not had control over the content.” S. Rep. No. 102-190 at 3. See also 47 U.S.C. § 228 (i) (limiting the definition of pay-per-call services to those services that impose a “charge, greater than, or in addition to, the charge for transmission of the call.”).

²⁷ Petition at 6-7; 13.

²⁸ To best illustrate BDP's apparent pattern of employing unjust and unreasonable telemarketing practices and effecting unauthorized PIC changes, the *BDP NAL* profiled five complaints rather than describe the facts of all 30 complaints that were in the record. See *BDP NAL*, 14 FCC Rcd at 345.

²⁹ The record also included a letter that BDP sent to consumers pursuant to a June 1998 legal settlement with AT&T Corp. As part of the settlement, BDP was required to notify consumers that BDP is not affiliated with AT&T and that BDP may have left a different impression with consumers. See *BDP NAL*, Appendix D.

³⁰ Although the *NAL* also describes a consumer complaint and supporting declaration from Mr. Kevin Kennedy, that complaint was not used to support the forfeiture calculation. Mr. Kennedy was not slammed by BDP, but instead worked briefly in BDP's customer service department while on assignment from a temporary agency. See *BDP NAL*, 14 FCC Rcd at 355 n.65.

³¹ See *BDP NAL*, 14 FCC Rcd at 353 (citing, for example, The Job Center, Informal Complaint No. IC-98-23919 (July 15, 1998) (in which complainant alleges that upon reviewing his telephone bill, he found, to his “amazement,” that AT&T was no longer his company's long distance carrier).

of its service offering. In the *NAL*, the Commission inferred that, “based on the clear pattern of deceptive behavior established in the record, BDP’s telemarketers and third-party verifiers deceived these consumers by misrepresenting BDP’s service as a bill consolidation plan offered by the consumers’ local exchange carriers or preferred interexchange carriers.”³² Upon further consideration, we agree with BDP that this inference, for 15 of the complaints, was unwarranted, but is valid for the other 15 complaints. Accordingly, we will reduce the forfeiture amount by \$600,000 (*i.e.*, the \$40,000 forfeiture amount for each violation of section 201(b), for 15 complainants).

12. We reject, however, BDP’s assertion that the Commission should reduce the amount of the forfeiture because several of the sworn declarations, filed in support of consumer complaints, are unreliable in that they rely upon hearsay.³³ Neither the Act nor the rules speak to the type or quantity of evidence necessary for assessing a forfeiture. Within constitutional limits, we believe it is within the Commission’s discretion to determine the kind of evidence needed to support a forfeiture. A review of the Commission’s past forfeiture actions reveals that while the Commission has based forfeitures on a combination of consumer complaints and sworn declarations,³⁴ the Commission has also based forfeitures solely on consumer complaints.³⁵ Hence, the Commission decides, on a case-by-case basis, whether to obtain declarations in support of the complaints and whether to include these declarations as part of the record. In the instant case, the forfeiture was supported by a body of evidence that included numerous complaints sufficient to establish a consistent pattern of abuses, as well as declarations filed in support of these complaints. While BDP is correct in asserting that a few of the declarants lacked personal knowledge of what occurred in the telemarketing calls with BDP, we continue to believe that it was a reasonable exercise of our discretion to accept such evidence against the backdrop of the *complete* record in this proceeding, which, as a whole, adequately supported the forfeiture. Indeed, the Commission has stated that while the Federal Rules of Evidence generally govern Commission hearings, these rules may be “relaxed if the ends of justice will be better serviced by so doing.”³⁶ To that end, the Commission has noted that in certain circumstances, we may consider hearsay as probative evidence “if it would serve the interests of justice.”³⁷ We believe that in the instant proceeding, it serves the interests of justice to consider the challenged declarations along with the whole body of evidence, which, as stated above, includes documentary evidence sufficient to support the assessed forfeiture.

³² *See id.*

³³ Petition at 16-17.

³⁴ *See, e.g., Long Distance Services, Inc.*, Order of Forfeiture, 13 FCC Rcd 4444 (1998).

³⁵ *See, e.g., Amer-I-Net Services Corp.*, Order of Forfeiture, 15 FCC Rcd 3118 (2000).

³⁶ 47 C.F.R. § 1.351; *see also WWOR-TV, Inc. et al.*, 5 FCC Rcd 4113 (Rev. Bd. 1990).

³⁷ *See Paul Kelley*, 5 FCC Rcd 1955, 1957 n.13 (1990).

C. Appropriateness of Assessed Forfeiture Amount

13. BDP seeks a reduction of the forfeiture on the grounds that the *Forfeiture Order* did not consider its arguments that: 1) the proposed forfeiture was out of proportion to the alleged offense, in contravention of the Eighth Amendment to the U.S. Constitution;³⁸ and 2) the forfeiture for the section 201(b) violations was inconsistent with the Commission's *Forfeiture Policy Statement*.³⁹ BDP also asserts that the Commission abused its discretion because it failed to analyze: 1) the "actual damages" incurred by each complainant (*i.e.*, "the amount BDP refunded the customer plus amounts refunded by the local exchange carrier which BDP paid"); and 2) the ratio of the damages to the penalty.⁴⁰ Finally, BDP claims that it was denied due process because it was never "placed on notice" that it could be fined separately for fraudulent acts under section 201(b) of the Act.⁴¹

14. BDP's arguments do not justify a reduction of the forfeiture amount. Contrary to BDP's contention, the *Forfeiture Order* considered and rejected BDP's arguments concerning the amount of the proposed forfeiture.⁴² First, as we stated in the *Forfeiture Order*, the forfeiture is consistent with the guidelines established in the *Forfeiture Policy Statement*, and with our broad discretion under section 503(b) of the Act to determine forfeiture amounts based on the circumstances of each individual case.⁴³ As we noted in the *Forfeiture Order*, we assessed the standard \$40,000 amount established in the *Forfeiture Policy Statement* for slamming violations, even though it would have been within our discretion to assess a forfeiture higher than the standard amount. Indeed, in other cases involving similarly egregious slamming activity, we have assessed double the base forfeiture amount for slamming.⁴⁴ The amount of the forfeiture is well within the statutory maximum, and we find no basis for the assertion that it is unconstitutionally high.

15. Further, we reiterate that neither the *Forfeiture Policy Statement*, nor any other Commission order, barred us from finding section 201(b) violations based on conduct related to

³⁸ Petition at 19-21.

³⁹ *Id.* at 21 (citing *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate Guidelines*, Report and Order, 12 FCC Rcd 17087(1997), *recon. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*)).

⁴⁰ Petition at 21-22.

⁴¹ Petition at 23.

⁴² *See Forfeiture Order*, 15 FCC Rcd at 14471.

⁴³ 47 U.S.C. § 503(b)(2)(D). Section 503(b) requires that the Commission consider the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.

⁴⁴ *See Forfeiture Order*, 15 FCC Rcd at 14471) (citing, for example, *Amer-I-Net Services Corp.*, Order of Forfeiture, 15 FCC Rcd 3118 (2000)).

slamming.⁴⁵ Contrary to BDP's argument, the fact that the Commission's guidelines establish a standard forfeiture amount of \$40,000 for "unauthorized conversions" does not imply that a carrier's fraudulent conduct in connection with marketing that results in slamming constitutes a "single violation" that can only be punished under section 258 of the Act.⁴⁶ Indeed, the *Forfeiture Policy Statement* specifically states that "any omission of a specific rule violation [such as section 201(b)] . . . should not signal that the Commission considers any unlisted violation as nonexistent or unimportant."⁴⁷ Moreover, we note that case law indicating that deceptive marketing could constitute a violation of section 201(b) pre-dated the behavior here.⁴⁸ For these reasons, we find no merit in BDP's claim that it was denied due process because it was never "placed on notice" that it could be fined separately for fraudulent acts under section 201(b) of the Act. We also reject BDP's argument that the total forfeiture amount (resulting from the dual violations of sections 201(b) and 258) is excessive, and direct BDP to the *Forfeiture Policy Statement*, which seeks to "guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business."⁴⁹ The Commission specifically cautioned carriers that "the forfeiture amount set out in a Notice of Apparent Liability against them may in many cases be above, or even well above, the relevant base amount."⁵⁰

16. As to BDP's assertion that we failed to consider all of the evidence in calculating its forfeiture, including transcripts of its verification tapes,⁵¹ we direct BDP's attention to the *NAL*, which addressed the 45 audiotapes submitted by BDP. The Commission found that the proffered tapes failed to negate the complainants' assertions that during verification calls, BDP's verifiers misrepresented the nature of BDP's service offering.⁵² BDP's subsequent submission of transcripts of some of these same tapes, in connection with its Response to the *NAL*, did nothing to alter our conclusion.⁵³ We also reject BDP's assertion that we were required to base the forfeiture amount on the "amount BDP refunded the customer plus amounts refunded by the local exchange carrier which BDP paid" and the ratio of the damages to the penalty. As noted above, the Commission possesses broad discretion to assess penalties for slamming and/or section 201(b) violations on a case-by-case basis, relying upon not only the damage to consumers, but "the

⁴⁵ *Id.*

⁴⁶ Indeed, we stated in the *Forfeiture Order* that although BDP's deceptive marketing practices were closely related to its slamming conduct, the two violations were separate and distinct. BDP could have slammed the complainants without misrepresenting the nature of its service offering, it could have misrepresented its service offering without slamming the complainants. The fact that it did both militated strongly in favor of assessing an *overall* forfeiture amount greater than the standard amount for slamming. *Id.* at 14472 n.65.

⁴⁷ *See Forfeiture Policy Statement*, 12 FCC Rcd at 17099.

⁴⁸ *See, e.g., AT&T*, 71 RR2d 775 (1992); *TRAC Decision*, 4 FCC Rcd 2157 (Com.Car. Bur. 1989).

⁴⁹ *Id.*

⁵⁰ *See id.*

⁵¹ Petition at 20 n.17. BDP notes that it submitted transcripts for 24 of its verification tapes. *Id.*

⁵² *BDP NAL*, 14 FCC Rcd at 358.

⁵³ *Forfeiture Order*, 15 FCC Rcd at 14472.

nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”⁵⁴ Thus, while BDP may disagree with our conclusions in the *Forfeiture Order*, it has failed to demonstrate that further reduction of the forfeiture amount is warranted.

IV. ORDERING CLAUSES

17. Accordingly, for all the reasons stated above, IT IS ORDERED, pursuant to Section 405 of the Communications Act, as amended, 47 U.S.C. § 405, and Section 1.106 of the Commission’s Rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed by Business Discount Plan, Inc. IS DENIED IN PART AND GRANTED IN PART.

18. IT IS FURTHER ORDERED, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.80(f)(4) of the Commission’s rules, 47 C.F.R. § 1.80(f)(4), that Business Discount Plan, Inc. SHALL FORFEIT to the United States Government the sum of one million eight hundred thousand dollars (\$1,800,000) for violating Sections 201(b) and 258 of the Act, 47 U.S.C. §§ 201(b), 258, as well as the Commission’s rules and orders in effect from December 1997 to December 1998 governing interexchange carrier conversions.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

⁵⁴ 47 U.S.C. § 503(b)(2)(D).

**STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH,
CONCURRING IN PART, DISSENTING IN PART**

Re: Business Discount Plan, Inc., Apparent Liability for Forfeiture, Order on Reconsideration, File No. ENF 98-02, NAL/Acct. No. 916EF0004 (rel. December 7, 2000).

As I stated in the original Order of Forfeiture, I support the Commission's decision to impose a substantial fine for "slamming" on Business Discount Plan.⁵⁵ However, I respectfully dissent from the Commission's imposition of additional forfeitures based on allegedly misleading advertising claims under Section 201 (b). As I have described extensively elsewhere, I believe the Commission should not assert jurisdiction over carriers' advertising practices because: (1) the Commission's statutory authority in this area is, at best, scant; (2) the FCC has not promulgated advertising guidelines through a transparent or open procedural process; (3) the states have greater expertise in this area and are fully capable of resolving these issues; and (4) the Commission's resources are better spent on regulatory activities squarely within its statutory authority.⁵⁶ I continue to believe that the Commission's forays into the world of advertising regulation are an unfortunate distraction from the other important (and clearly statutorily authorized) work of the Commission.

⁵⁵ See Statement of Commissioner Harold Furchtgott-Roth, Concurring In Part, Dissenting In Part in *Business Discount Plan, Inc.*, Order of Forfeiture, 15 FCC Rcd 14, 461 (2000); see also Dissenting Statement of Commissioner Harold Furchtgott-Roth in *Joint FCC/FTC Policy Statement for the Advertising of Dial-Around and Other Long Distance Services to Consumers*, 15 FCC Rcd 8654 (2000).

⁵⁶ See Harold Furchtgott-Roth and Bryan Tramont, *Commission on the Verge of a Jurisdictional Breakdown*, 8 CommLaw Conspectus 219 (Summer 2000).