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WHEN THE PHONE COMPANY IS NOT THE PHONE COMPANY: CREDIT REPORTING IN THE POSTDIVESTITURE ERA

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INTRODUCTION

The breakup of AT&T (the Bell system) offers new opportunity for advocates to insist on collection protections for low-income clients. Local telephone companies[1] in the postdivestiture era must be especially careful to report payment problems accurately whenever they collect bills both for themselves and for long-distance carriers. Whether or not bills are in dispute are two of the issues that advocates should address.

Telephone company collection practices often fail to meet some of the most rudimentary requirements of the statutory constraints on debt collection practices. This article looks in particular to the credit reporting implications of having local phone companies collect bills for long-distance interexchange carriers. Part II examines the current credit collection relationship between the Bell companies and long-distance interexchange phone companies. Part III discusses whether phone companies actions are subject to the federal Fair Credit Reporting Act (FCRA). Part IV looks at the FCRA issues raised by the Bell companies' billing and collection activities. The evaluation in this article is based in part on a National Consumer Law Center (NCLC) study of the Michigan Bell Telephone Company on behalf of the Michigan Divestiture Research Fund.[2]

The question of whether a Bell company acts as a "consumer reporting agency" takes on added significance in those states where the public utility commission (PUC) has held that long-distance interexchange service is a service that must be treated separately for purposes of disconnection due to nonpayment. The PUCs in at least seven states have held that local phone companies that sell billing and collection services must treat the disconnection of local service and the disconnection of long-distance service as separate transactions.[3] Before looking at the FCRA implications of these holdings, however it is important to understand the nature of a Bell company's sale of billing and collection services.

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[1] This article will discuss the Bell companies. This choice, however, is merely for convenience. The principles apply to any local telephone company. Similarly, while this article will discuss AT&T, the principles would hold for any interexchange carrier to which a local telephone company sells a billing and collection service.

[2] National Consumer Law Center (NCLC), Telephone Customer Service Regulations in the Post-Divestiture Environment; A Study of Michigan Bell Telephone Company (July 1988). In addition to the credit reporting issues, the Michigan Bell report looks at deposits, payment plans, collection procedures, and telephone shutoffs. Only credit reporting will be discussed herein.

[3] *See generally,* NCLC, Denial of Local Telephone Service for Nonpayment of Toll Bills, A Review and Assessment of Regulatory Litigation (Jan. 1989). Four of the five states that have most recently considered the issue have denied the right to disconnect local service for nonpayment of a toll bill. *Id.,* at 4.

BILLING AND COLLECTION SERVICES

After the breakup of the Bell system,[4] AT&T no longer had the ability to bill and collect for the long-distance services provided to its customers.[5] As a result, local exchange companies began to sell a new "service" to AT&T. This service, known as billing and collection service, is composed of several parts. The "billing" component largely involves measuring the units of service provided by AT&T to the long-distance consumer[6] and rendering a periodic accounting to the customer along with an invoice for the amount due. The "collection" component is a different service.[7] This service involves the local telephone company accepting payments for long-distance bills, crediting customer accounts, and undertaking collection activities for arrears, which includes sending reminder notices, collecting deposits, and disconnecting service. A third—again distinct—service is "inquiry." "Inquiry" service means that the local Bell company is responsible for answering questions and resolving disputes regarding any bill for AT&T service.[8]

Local exchange companies receive considerable compensation for the sale of these billing and collection services. Estimates of annual payments to the Bell companies range from $2 million in West Virginia, to $6 million in Maine, to $426 million in New York.[9] Indeed, in some states, the receipt of revenue from the sale of these services is considered so important that it is the basis for denying requests to prohibit local companies from disconnecting local service for nonpayment of a long-distance bill.[10]

In collecting long-distance bills for AT&T, the local Bell company is not acting in its capacity as a phone company and is not providing a "telecommunications service."[11] The Federal Communications Commission (FCC) recently deregulated the sale of interstate interexchange billing and collection services.[12] In considering this deregulation, the FCC explored in detail what a billing and collection service was (and was not). It found that such a service was "not inherently a telecommunication service.[13] Instead the FCC concluded that billing and collections services were fundamentally "financial and administrative services"[14] and that entities such as Visa and American Express were seeking to enter the market as well.[15] According to the FCC,

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[4] United States v. AT&T, 552 F. Supp 131 (D.D.C. 1982).
[5] *See,* NCLC, *supra* note 2, at 21-22
[6] This would, for example, measure such factors as the number, length, distance, and time of day of calls.
[7] *See,* NCLA, *supra* note 2, at 40.
[8] *See,* NCLA, *supra* note 3, at 22, n.31.
[9] I*d.,* at 40.
[10] *See e.g.,* New England Tel. & Tel. Co., 78 Pub. Util. Rep. 4th (PUR) 392 (Vt. Pub. Serv. Bd. 1986). These states adopt the position that without the right to disconnect local service, billing and collection services would not be marketable to AT&T. *See generally,* NCLC, s*upra* note 3, at 38, n.55.
[11] As a result of the deregulation of billing and collection services provided by local phone companies to interexchange carriers, the revenue attribution to the sale of that service is not part of the local phone company's regulated accounts. It does not, therefore, benefit regulated ratepayers. The same would be true for the sale of intrastate billing and collection services in states in which those services have been deregulated by the state's public utilities commission.
[12] *See,* Detariffing of Billing & Collection Serv., 100 F.C.C.2d 607 (1985) (notice of proposed rulemaking); Detariffing of Billing & Collection Serv., 102 F.C.C.2d 1150 (1986) (order adopting rules).
[13] Detariffing of Billing & Collection Serv., 100 F.C.C.2d 607, at 611.
[14] *Id*., at 609.
[15] Detariffing of Billing & Collection Serv., 102 F.C.C.2d 1150,1158; *see also,* NCLA, *supra* note 3, at n.40.

> The system set p by the carriers for the purpose of billing telephone calls can be used to bill other products and services as well. Thus, for example, a consumer's local telephone service could be discontinued for nonpayment of a department store bill.[16]

In light of these findings, it is important to determine how a local Bell company is treated by other credit and collection statutes.

TELEPHONE COMPANIES AS "CREDIT REPORTING AGENCIES"

Telephone companies that collect bills for interexchange carriers should be considered "credit reporting agencies" for purposes of the federal Fair Credit Reporting Act (FCRA) whenever they

pass on credit and collection histories to third parties.[17] The FCRA defines a "credit reporting agency as any person who "for monetary fees. . . .regularly engages in. . . the practice of assembling or evaluating consumers for the purpose of furnishing consumer reports to third parties." [18] There is no question that Bell companies receive "monetary fees" for their activities or that they "regularly engage" in assembling and evaluating credit information. Questions do arise, however, as a result of the remaining part of the FCRA definition regarding "consumer reports to third parties."

Consumer Report

One of the more difficult questions is whether the reporting of credit information by a Bell company is a "consumer report." To be a consumer report, the information communicated must be used or expected to be used or collected for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, (2) employment purposes, or (3) other purposes authorized under section 1681(b) of the FCRA.[19]

The credit information collected and reported by Bell companies is often to be used in the collection of unpaid bills and in the determination of security deposits.[20] In supplying the information to third parties, the Bell companies are fully aware that this will be the actual use of this information.[21] Thus, the only remaining issue is whether this a permissible purpose under the FCRA.

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[16] Detariffing of Billing & Collection Serv., 100 F.C.C.2d 607, 611.
[17] *See,* 15 U.S.C.A. §1681 (West 1982).
[18] *Id., a*t §1681a(f).
[19] *Id., a*t §1681a(d).
[20] *See e.g.,* Michigan PUC's rule 34, which provides that a deposit may be requested when an applicant has an outstanding bill with a public utility.
[21] There are two situations in which Bell companies would be reporting consumer credit information. The first is a case in which Bell provides consumer credit information directly to other public utilities. *See, eg.,* NCLC, *supra* note 2, at 164-168. The second is in the case of a joint credit reporting agency. *See, e.g.,* NCLC, *supra* note 2, at 168-179; *see also,* Yanz & Heymes, *A Joint Venture in Reducing Utility Bad Debt,* 121 Pub. Util. Fortnightly 16 (March 17, 1988).

The FCRA states that use of information for establishing a consumer's eligibility for "credit" is a permissible purpose.[22] Nonetheless, the statute raises two questions in the context of telephones: (1) whether utilities extend "credit"; and (2) if so, whether the Bell information is used to determine "eligibility" for such credit.

Public utility bills, even in a regulated environment, fall within the traditional definition of "consumer credit," based on a variety of consumer credit statutes. While the FCRA does not itself define "credit," other statutes provide meaningful assistance.

- Truth in Lending. Under the Federal Truth in Lending Act (TILA), "credit," is "the right granted by a creditor to a debtor to defer payment of debt or to incur debt and to defer its payments."[23] By providing utility service to a customer without payment at the time of delivery, the utility has, in effect, allowed the customer to incur a debt and to defer its payment. Moreover, the fact that Congress specifically exempted public utility transactions from TILA's coverage in a separate section of the Act[24] suggests that such transactions were considered to be "credit."

- Equal Credit Opportunity Act. Under the federal Equal Credit Opportunity Act[25] and Regulation B,[26] consumer credit is defined as the right granted by a creditor to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment.[27] According to the Federal Reserve Board, a public utility extends credit whenever it "provides service to its customers and the customers and the customers are allowed to pay for the service at some time after receiving it."[28]

It could be argued, however, that utilities receiving credit information from a Bell company are not using the collection information to establish a customer's "eligibility" for utility credit. While it is true that public utilities, unlike banks and most other creditors, generally cannot deny credit to a customer, negative credit information from a Bell company is often used to access certain eligibility criteria, such as whether a deposit will be demanded.[29] Moreover, the FCRA also states that a permissible purpose for the information in a credit report will be any purpose authorized by section 1681(b) of the statute. That section provides that a credit reporting agency may furnish a consumer report to any person who it believes "intends to use the information in connection with a credit transaction involving the consumer. . .and involving the extension of credit to, or review or collection of an account of, the consumer." This "in connection with"

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[22] 15 U.S.C.A. §1681a(d) (West 1982).
[23] *Id.,* at §1602 (e).
[24] *See generally,* NCLC, Consumer Credit & Sales Legal Practices Series, Truth in Lending, section 2.5.5, at 55 (2d ed. 1989).
[25] 15 U.S.C.A. §1691 (West 1982).
[26] Reg. B. 12 C.F.R. §202.
[27] *See generally,* NCLC, Consumer Credit & Sales Legal Practices Series, Equal Credit Opportunity Act, section 3.2.1. at 25 (2d ed. 1988).
[28] FRB Official Staff Commentary, ECO-1, §202.3(a)-(2); *see also,* NCLC, s*upra,* note 27, section 3.2.3.2.1, at 28. Public Utilities are, however, exempt from some provisions of the Equal Credit Opportunity Act. Reg. B., 12 C.F.R. §202-3(a).
[29] For those customers who cannot afford large deposits, one could argue that the demand for a large deposit based on a Bell company credit report is equivalent to the denial of credit.

language is broader than the "eligibility" language[30] and, indeed, is not limited to "eligibility" for credit.

Reporting Internal Information

Another problem with imposing FCRA obligations on a local telephone company[31] is that the definition of a consumer report excludes information reported by a person or company whose experience with the consumer is reflected in the information.[32] In contrast, information about a third party's transactions with the consumer is a consumer report[33]--that is, if the company reporting the information is a consumer-reporting agency.[34]

A perfunctory glance at Bell's billing and collection services may lead one to conclude erroneously that Bell falls within this exception to the FCRA. In collecting long-distance bills for interexchange carriers, Bell often actually purchases the account. As a result, reporting whether or not the consumer pays may superficially seem simply to involve transactions on accounts that Bell itself owns.[35]

It is important to remember, however, that to fall within this exception, the report must be "composed *entirely* of information as to transactions and experiences between the consumer and the person making the report."[36] If a report does *not* consist solely of information as to "transactions and experiences of which they have had first hand knowledge—based on their own experience with the consumer involved,"[37] the exception does not apply.[38]

The courts have considered this exception several times in recent years. In *Freeman v. Southern National Bank,* the district court dismissed an FCRA claim against a bank, holding that in a case in which the bank was furnishing information solely on its own experience with the consumer, the information was not a consumer report.[39] Importantly, though, the factor that the court found convincing was that "the bank's affidavit confirms that the information was developed solely from the bank's own records."[40] Similarly, in *Nuttleman v. Vossberg,*[41] the district court held a grain marketing cooperative not to be a consumer reporting agency, since it furnished

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[30] 15 U.S.C.A. §1681a(d) (West 1982).
[31] The first problem is the argument that the information is not used to establish "eligibility" for "credit".
[32] 15 U.S.C.A. §1681a(d)(3)(A) (West 1982).
[33] *See,* Federal Trade Commission (FTC), Compliance with the Fair Credit Reporting Act, at 42 (rev. ed. 1977) (reproduced as Appendix C to NCLC, Consumer Credit & Sales Legal Practice Series, Fair Credit Reporting Act (2d ed. 1988)).
[34] 15 U.S.C.A. §1681a(d) (West 1982).
[35] Both Michigan and New England Telephone, however, sell the accounts that they cannot collect back to AT&T. Thus, even though not addressed herein, one might pursue the question of whether an argument that the "sale" to Bell should be ignored for purposes of determining whether the AT&T bills are those of a "third party."
[36] FTC, *supra* note 33, at 42 (emphasis added).
[37] *Id., a*t 43.
[38] 15 U.S.C.A. §603d(3)(A) (West 1982).
[39] Freeman v. Southern Nat'l Bank, 531 F. Supp. 94 (S.D. Tex. 1982); *accord,* Rush v. Macy's New York, 596 F. Supp. 1540 (S.D. Fla. 1984), *aff d*, 775 F.2d 1554 (11th Cir. 1985).
[40] *Freeman*, 531 F. Supp. 94, at 95-96; *see also,* Porter v. Talbot Perkins Children's Servs., 355 F. Supp. 174, 177 (S.D.N.Y. 1973) (Clearinghouse No. 10,571) (giving out "a firm's own ledger" does not make it a consumer reporting agency or the information a consumer report).
[41] Nuttleman v. Vossberg, 585 F. Supp. 133 (D.Neb. 1984).

information based solely on its experiences with a consumer.[42] The information at issue, the court found, involved "only 'records pertaining to business transacted' with the plaintiff."[43]

A Bell company's report of the payment status of any particular customer with unpaid interexchange bills will not likely fall within the exemption elucidated by these cases. A Bell company is not reporting information "developed solely from [its] own records," as in *Freeman.* Nor is a Bell company reporting information developed only from "records pertaining to business transacted" between itself and the plaintiff, as in *Nuttleman.*

For a customer to be in "default" to a public utility, there must be a bill exhibiting both of two characteristics: (1) it must remain unpaid; and (2) it must not be in dispute.[44] Thus, even while a Bell company may have first hand experience with determining whether a bill has been paid, its report of whether or not a bill is "in dispute" must rely on the experiences of AT&T as the service provider. Accordingly, whether or not a telephone bill, composed in part of local charges and in part of interexchange charges, is in "default" does not fall within the exemption for reports "composed entirely of information as to transactions and experiences between the consumer and the person making the report." The combination of needing to know both pieces of information brings the reporting of telephone customer payment data within the FCRA.

It is at this point that a local PUC decision on whether a local phone company may disconnect local service for nonpayment of a long distance bill becomes important. If a local phone company is permitted to make such disconnection, the phone company would argue that it engages in "single balance billing" and that there is no separate "local bill" and "long distance bill." Instead, the local phone company would contend that there is simply a single balance due to the local company and that the interexchange carrier is out of the process entirely.

A strong argument can be made, however, that the analysis on the distinction between determining whether bills are paid or whether bills are in dispute would still apply under single balance billing. The need to consult AT&T would infect the entire "single balance" rather than merely affect the component involving toll charges. The distinction, nevertheless, is much easier to conceptualize in states where the "separateness" of the bills has been made formal.

The only situation in which the distinction is not valid is when the local Bell company takes sole responsibility for "inquiry" service and the interexchange carrier is cut out of the billing and collection process altogether.[45] If, in contrast, the interexchange carrier has any "inquiry" responsibility, the FCRA is still applicable, because the Bell company would need to rely at least in part on information provided by the interexchange carrier, a third party.

The rule that a disputed bill may not serve as a basis for a payment default is fundamental in public utility law. The principle that a "default" occurs only if there is an unpaid bill not in

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[42] *Id.,* at 136.
[43] *Id.*
[44] *See, infra,* notes 46-50 and accompanying text.
[45] *See, supra,* text accompanying note 8, for a discussion of the "inquiry" service.

dispute is not only incorporated into a myriad of state PUC regulations,[46] but it has long been a part of the common law as well. The Maine Supreme Court, as early as 1895, in *Woods v. Auburn,*[47] held that a utility may not disconnect service based upon a disputed bill. The *Woods* court set forth a policy that endures to this day.

> The parties are not upon equal ground. The city, as a water company, cannot do as it will with its water. It owes a duty to each consumer. The consumer, once taken on to the system, becomes dependent on that system for a prime necessity of business, comfort, health, and even life. He must have pure water daily and hourly. To suddenly deprive him of this water in order to force him to pay an old bill claimed to be unjust puts him at an enormous disadvantage. He cannot wait for the water. He must surrender, and swallow his choking sense of injustice.[48]

The Maine court continued:

> Such a power in a water company or municipality places the consumer in its mercy. It can always claim that some old bill is unpaid. The receipt may have been lost, the collector may have embezzled the money; yet the consumer must pay it again, and perhaps still again. He cannot resist, lest he lose the water.[49]

The rule that a utility may not disconnect a customer whose bill is in dispute is nearly universal.[50]

POTENTIAL FAIR CREDIT REPORTING ACT REQUIREMENTS

The relationship between the Bell companies and long-distance telephone companies through Bell's sale of billing and collection service should raise concerns about compliance with federal Fair Credit Reporting Act requirements. The issue arises in two different contexts. The first involves Bell's ongoing credit checking with other Bell operating companies in the event that an individual applies for home telephone service.[51] The second involves the sharing of credit information between utilities in some centralized fashion.[52]

Compliance requirements arise in two different areas. Specific statutory responsibilities are placed both upon users of consumer reports and upon consumer reporting agencies. Each will be examined separately.

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[46] For a discussion of the substantive law of utility shutoffs, *see generally* NCLC, Compendium and Analysis of State Regulations and Laws Regulating Utility Service Terminations and Disputes (1982); *see also,* NCLC, Model Residential Utility Service Regulations (1984).
[47] Wood v. Auburn, 32 A. 906 (Me. 1895)
[48] *Id.,* at 907-908.
[49] *Id.,* at 908.
[50] *See e.g.,* Am. Jur. 2d, *Public Utilities, §* 16 (1972); *see also,* Annotation, *Right to Cut Off Supply of Electricity or Gas Because of Nonpayment of Service or Charges* 112 A.L.R. 237 (1938); Annotation, *Right to Cut Off Water Supply Because of Nonpayment of Water Bill or Charges for Connection, etc.* 28 A.L.R. 472 (1924).
[51] *See e.g.,* NCLC, *supra* note 2, at 165-168.
[52] *Id,* at 168-183.

Users of Consumer Reports

A user of a consumer report is required to advise a consumer whenever "credit or insurance. . .is denied or the charge for such credit or insurance is increased" based on information contained in a consumer report.[53] The user also must inform the consumer of the name and address of the agency that made the report. Whenever a Bell company provides customer credit and collection information to a centralized credit screening entity[54] or to other individual utilities, the utilities relying on such information must comply with this disclosure requirement if they are denying or increasing the charge for utility credit based on the Bell reports.[55]

This may occur, for example, when a utility denies service either until the back bill with Bell is paid or until arrangements for payments are made. It may also occur if a utility arrangement for payment are made. It may also occur if a utility demands a deposit, the amount of which is based in whole or in part on an arrears reported to be owned to Bell. In this latter instance, by demanding a security deposit, the utilities are increasing the charge for the extension of utility credit.

The FCRA itself provides little insight into the specific meaning of a denial or increase in charges. However, guidelines prepared by several federal financial regulatory agencies, as reproduced in the NCLC manual on the FCRA,[56] shed some light on the meaning of credit denial:

> If any condition is imposed, without which credit would not be extended, and it is imposed because of information in the consumer report, there is a 'denial' which would require disclosure. This would include cases where a large downpayment, a shorter maturity, a co-signer, guarantor, or additional collateral is required as a condition of extending credit.[57]

Based upon these guidelines, there can be little doubt that a request for a security deposit is an adverse action under the FCRA, mandating compliance with the basic disclosure requirements. Even though a deposit might never be applied as a payment on a customer's account, and will be returned to the customer if the conditions provided for in the PUC's regulation are met, the customer must pledge his or her property for a stated period of time as a condition for the extension of credit. Like the demand for a larger downpayment, it increases the "cost" of credit at the time of application. Moreover, it is not unlike the demand for collateral in a credit transaction in that deposits are used to provide security to utilities in the event of default.

The user of the report must also advise the consumer of the name and address of the credit reporting agency that furnished the report whenever an adverse credit decision is made based on

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[53] 15 U.S.C.A. §1681m (West 1982).
[54] *See e.g., supra,* note 48 and accompanying text.
[55] It was established above that the provision of utility service involves the extension of credit.
[56] *See,* NCLC, Consumer Credit & Sales Legal Practice Series, Fair Credit Reporting Act, Appendix B, at 85 (2d ed. 1988).
[57] Guidelines for Financial Institutions in Complying with Fair Credit Reporting Act. Consumer Credit Guide (CCH), §59,7451 (1971).

information in the report.[58] The intent is to give a consumer the opportunity to review all information in the files of the consumer-reporting agency regarding the consumer.[59]

FCRA's disclosure requirements are an integral part of the statute, because they trigger other rights that FCRA offers consumers.[60] Those other rights, however, come into play only through the consumer reporting agency.

Consumer Reporting Agencies

Perhaps the most important FCRA provisions in the telephone arena involve the requirements imposed on the reporting agency. The consumer has a right to receive an accurate disclosure of the "nature and substance" of all information regarding the consumer in the consumer reporting agency's files.[61] The consumer reporting agency is also required to disclose the sources of the information that it has in its files.[62] Finally, the agency must disclose the names of all "recipients" of consumer reports about the consumer within six months of the request for disclosure.[63]

Compelling reasons exist for obtaining disclosure of all information in a credit report. Similarly, a customer should be advised of the utilities that have received the report. If the report has disseminated misinformation, these disclosures will assist the consumer in correcting the information and assessing the damage.

Under the FCRA, a consumer also has the right to dispute any item in the file that is believed to be inaccurate or incomplete.[64] If the consumer disputes an item, the consumer-reporting agency must conduct a reinvestigation.[65] After such a reinvestigation, the agency must delete any information from the file that is found to be inaccurate or cannot be verified.[66] The FCRA provides that a consumer may file a statement of dispute if he or she still disputes an entry in the report after the consumer reporting agency has completed a reinvestigation.[67] If such a statement is filed, the agency must provide the statement or a summary in subsequent reports issued to users.[68]

The final major requirements placed on consumer reporting agencies relate to procedures that must be adopted to ensure the accuracy of the information reported. A consumer-reporting agency has an affirmation obligation to ensure the accuracy of such information.[69] Moreover, the

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[58] 15 U.S.C.A. §1681m (West 1982).
[59] *Id.,* at §1681g(a)(1).
[60] For a detailed discussion of these rights, *see,* NCLC, *supra* note 56.
[61] 15 U.S.C.A. §1681g(a)(1) (West 1982).
[62] *Id.,* at §1681g(a)(2).
[63] *Id.,* at §1681g(a)(3)(B).
[64] *Id,.* at §1681I(a).
[65] *Id.*
[66] *Id.*
[67] *Id.,* at §1681I(b).
[68] *Id.*
[69] *See,* NCLC, *supra* note 56, section 2.3, at 68.

information must not be "obsolete."[70] Information is "obsolete" if it is more than seven years old.[71]

Damages and Attorney Fees

The unlawful or erroneous denial of telephone service represents a common-law tort.[72] If the local phone company has at all reported the denial of service, or the circumstances giving rise to it, the consumer may wish to attach an FCRA claim to the tort action. The FCRA provides for the collection of damages, both actual[73] and punitive.[74]in proper circumstances. Moreover, the FCRA provides for the award of costs and attorney fees in successful actions.[75]

SUMMARY

The breakup of the Bell system is significant for low-income consumers in the area of fair credit reporting. The federal Fair Credit Reporting Act is applicable in those instances in which a consumer reporting agency collects and disseminates credit information about individuals. Before divestiture, so long as a telephone company reported only information derived from its own records, about its own dealings, with its own customers, it did not fall within the statutory purview of the FCRA.

Since divestiture, however, the local telephone company no longer falls within this FCRA exemption. The FCRA applies to those local telephone companies that bill and collect for interexchange carriers such as AT&T. In such instances, in order to report a customer delinquent on his or her bill, two findings must be made: (1) that the customer has made no payment; and (2) that no dispute exists with regard to the bill. While Bell may rely on its own records as to the first finding, it must contact the interexchange carrier and obtain information from that carrier as to the second.

The applicability of the FCRA to Bell transactions opens an entirely new line of consumer remedies for telephone customers. Those remedies offer customers an opportunity to contest adverse credit reports as well as reasonable methods for ensuring the accuracy of such reports. Using the FCRA to challenge improper Bell practices, in addition to the remedies available before state PUCs, provides exciting new ways to protect aggrieved telephone utility customers.

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[70] *Id.,* section 2.3.1, at 69.
[71] 15 U.S.C.A. §1681c(a)(6) (West 1982).
[72] Colton, *Unlawful Utility Disconnections as a Tort: Gaining Compensation for the Harms of Unlawful Shutoffs,* 22 Clearinghouse Rev. 609 (1988).
[73] For a discussion of when actual damages may be awarded, *see*, NCLC, *supra,* note 56, section 5.5.1 at 127.
[74] For a discussion of when punitive damages may be awarded, *see*, NCLC, *supra*, note 56, section 5.5.2, at 128.
[75] *See, Id.,* section 5.5.3, at 129.