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Federal Communications Commission
Office of the Secretary

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

In the Matter of	)	93-268
	)	
Petition to Amend Part 68 of the Commission's Rules to Include Terminal Equipment Connected to Public Switched Digital Service	)	RM-6147

REPLY COMMENTS OF IDCMA

The Independent Data Communications Manufacturers Association, Inc. ("IDCMA"), by its attorneys, hereby replies to the comments submitted December 9, 1987, in response to the above-captioned Petition for Rulemaking. In its Petition, Ameritech has proposed that the Commission expand Part 68 to encompass customer-premises equipment ("CPE") connected to public switched digital services ("PSDS"). In comments on the Petition, American Telephone and Telegraph Company ("AT&T") has supported Ameritech's proposal; BellSouth has supported it to some extent but asked that it be held "in abeyance"; and the operating companies of U S West ("MTN et al.") oppose the petition. IDCMA supports Ameritech's stated objective and urges the Commission to initiate an appropriate rulemaking proceeding.

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IDCMA has strongly and consistently supported the Part 68 equipment registration program.[1] The Hush-A-Phone decision is over thirty years old,[2] and the Carterfone decision is almost twenty years old,[3] but the explosive growth of CPE competition has occurred predominantly during the past decade, i.e., since the establishment of Part 68. The registration program deserves much of the credit for today's CPE environment, in which hundreds if not thousands of manufacturers vigorously compete. The public reaps many rewards from this competition in the form of lower prices, wider choices, increased innovation, better service, etc.

Though limited at its inception, Part 68 has gradually been expanded to encompass a broad array of equipment connected to a wide variety of services. Each extension of Part 68 has stimulated competition for CPE used with

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1/ The facts presented by IDCMA in Docket 19419 were incorporated into Docket 19528, where the registration program was created. IDCMA's support for the program has continued faithfully to the present time. See Attachment A, which responds to an NWB et al. contention, repeated again in NWB's response to Ameritech's Petition, that Part 68 was intended as a "transitory" program and is less important now than in the past. See NWB et al. Opposition at 11.

2/ Hush-A-Phone Corp. v. U.S., 238 F.2d 266 (D.C. Cir. 1956).

3/ Carterfone, 13 FCC 2d 420, recon. denied, 14 FCC 2d 571 (1968).

the affected service, and CPE manufacturers have invariably delivered better products, at lower prices, than were available before competition was introduced. As new services emerge, Part 68 can and should continue to play a vital role in promoting a competitive environment.

It is these considerations that most influence IDCMA's reaction to Ameritech's Petition and that lead IDCMA to the conclusion that the Commission should respond favorably to Ameritech's request. Other factors tend to strengthen this conclusion. There seems to be a genuine opportunity for growth in switched digital services, and extension of the registration program as requested may also help to stimulate demand for such services, particularly now that communications can be effectuated between users connected to switches that use differing PSDS implementations.[4] Further, there is no inherent reason why a program that currently applies to equipment connected to switched analog services and private line digital services should not also be extended to equipment connected to switched digital services.

4/ Although MTN et al. claim that Ameritech's proposal "would sanction CPE incompatibility," MTN et al. Opposition at 2, the truth is that there is now no impediment to communications between CPE designed for use with AT&T's Circuit Switched Digital Capability and CPE used with Northern Telecom's Datapath.

For a variety of reasons, IDCMA has not yet had an opportunity to conduct a thorough review of the details of Ameritech's proposal nor of AT&T's proposed revisions to that proposal. IDCMA is prepared, however, to support the thrust of Ameritech's petition and to commend both Ameritech and AT&T for bringing a constructive approach to the issue. At the same time, IDCMA must strongly oppose the major themes of the pleadings filed by BellSouth and MTN et al.

Although their pleadings are packaged somewhat differently, both BellSouth and the U S West companies unite on two major points, one substantive and one procedural. The substantive contention is that "technology-dependent" and "media-dependent" interfaces are inconsistent with the public interest.[5] The procedural argument is that the Commission should not initiate a rulemaking but instead permit the issue of PSDS connection to be considered by the Exchange Carriers Standards Association's T1 Committee.[6] Both arguments are meritless.

As a substantive matter, the objections to "technology-dependent" interfaces merely echo tired

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5/ See BellSouth Comments at 3 n.2; MTN et al. Opposition at 2, 5, 6, 10.

6/ See BellSouth Comments at 4; MTN et al. Opposition at 7-9.

arguments -- calling for "stable interfaces" -- that have regularly been invoked in opposition to CPE competition. Indeed, these arguments were raised by the carriers in defense of their protective coupler requirements (e.g., data access arrangements) prior to the adoption of Part 68 and, more recently, in such contexts as 1.544 Mbps digital private line service and integrated services digital networks.[7] These arguments have not proved persuasive in the past, and they are not persuasive here. The carriers' "solution" to the "problem" of media- or technology-dependent interfaces is to deploy, at the customer's premises, some equipment that "insulates" the customer from changes in loop technologies or media and presents a "stable interface" to the consumer. Invariably, this "sblution" involves subsuming CPE functions in "network" equipment. Put another way, the same functionalities continue to be used at the customer's premises, but by calling it "network" equipment the carrier eliminates competition for these CPE functionalities.

At times, this "stable interface" argument has been pressed so far as to suggest that the EIA-232 interface

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7/ See, e.g., IDCMA Opposition to Petitions for Reconsideration, CC Docket No. 81-216, at 10-11 (Aug. 24, 1983).

should be the network boundary, an obviously absurd proposition that would convert modems -- the first equipment included in the Part 68 program -- into part of the network monopoly. The Commission has never accepted such an argument in the past and should not do so now.

The procedural suggestion of BellSouth and the U S West companies is closely related to their substantive argument. BellSouth's and MTN et al.'s desire to have interconnection matters decided by the T1 Committee rather than by the Commission presumably stems from their recognition that the T1 Committee is decidedly more hospitable to the "stable interface" argument than is the Commission. They are also aware that T1 deliberations are influenced more by carriers and their suppliers than by independent CPE manufacturers, and that T1 decisions are not necessarily based upon an overriding concern for consistency with the Commission's pro-competitive policies.

Of course, the T1 Committee is free to consider issues relating to PSDS, but this need not delay the issuance of a notice of proposed rulemaking on the same topic. There is plenty of time for additional facts and considerations to be developed and presented in the course

of the rulemaking proceeding,[8] but there is absolutely no justification for BellSouth's and the U S West companies' request to hold Ameritech's rulemaking petition in abeyance.[9] The consequences for CPE competition would be nothing short of disastrous were the Commission to abdicate its Part 68 responsibilities and cede authority over equipment interconnection issues to the T1 Committee.[10]

8/ In this regard, neither BellSouth nor MTN et al. has been as forthcoming or as constructive as might have been expected. For example, BellSouth claims that Ameritech's proposed standards would not only provide "harms to the network" protections but also establish "performance standards," BellSouth Comments at 2, 3, but no effort is made to identify which of the proposed rules fall into which category. Similarly, the U S West companies claim that Ameritech's assertion of potential network harm "has not been supported" or "quantif[ied"], MTN et al. Opposition at 4, 5, but they do not dispute that the potential exists. In the same vein, MTN et al. fault Ameritech for not taking into account the Universal Switched Digital Capability developed by Integrated Network Corporation ("INC"), id. at 3-4, 5, but no suggestions are offered for rules that would accommodate the INC implementation.

9/ BellSouth indicates that the T1 Committee has already proved to be "unable to develop a single set of performance specifications for PSDS . . . ." BellSouth Comments at 4. This makes it particularly inappropriate to suggest that PSDS standards should not only be deferred but also melded in with standards for entirely separate services such as integrated services digital networks and data-over-voice services. See BellSouth Comments at 3-4.

10/ The U S West companies strongly suggest that the T1 Committee is more capable than the Commission of considering "the interests of all affected parties." See MTN et al. Opposition at 8-9. Any such implication is self-evidently absurd.

Ameritech's proposal to extend Part 68 to equipment for connection to public switched digital services is ripe for consideration by the Commission. IDCMA urges the Commission to proceed with the initiation of a rulemaking proceeding to permit further consideration of specific Part 68 amendments.

Respectfully submitted,

INDEPENDENT DATA COMMUNICATIONS
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August 20, 1987

Mr. Gerald Brock
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Re: Part 68 Equipment Registration Program

Dear Mr. Brock:

On behalf of our client, the Independent Data Communications Manufacturers Association, Inc. ("IDCMA"), we are writing in response to a pleading filed on July 23, 1987, by the Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company ("U S West"). The pleading is couched as a response to a petition for rulemaking filed by American Telephone and Telegraph Company ("AT&T"), but U S West has taken the occasion to launch an irrelevant and uninformed attack on the Commission's Part 68 equipment registration program.

AT&T's petition for rulemaking (RM-5945) seeks Part 68 amendments to remedy certain billing problems that evidently arise when private branch exchanges fail to return "answer supervision" on Direct Inward-Dial trunks. Some parties have supported AT&T's petition, while others have opposed it. IDCMA takes no position on AT&T's proposal or on those responses which were germane to AT&T's petition.

What has stimulated this letter is the "conclusion" (pages 11-12) of U S West's July 23 comments on AT&T's petition. There, U S West misrepresents the history of Part 68 and challenges the foundation upon which the program is predicated.

U S West claims that Part 68 was adopted because "the former Bell System had not developed reasonable interface specifications and there were no industry standards organizations which were equipped to develop such standards." U S West at 11. Such a statement is patently absurd.

The reason Part 68 was adopted was that carriers -- including those now owned by U S West -- were restricting CPE competition by prohibiting or imposing burdensome conditions on the connection of independently supplied CPE to the network. The purpose of Part 68 was to eliminate such impediments to competition. The mechanisms chosen to implement this purpose were (1) the prescription of technical standards that ensure that any equipment connected to the network will not cause harm and (2) the establishment of a requirement that carriers permit the connection of any CPE that is shown to comply with those standards. For several good reasons, it was determined that the same technical standards should apply both the carrier-provided and independently supplied CPE.

The problem was not that the Bell System was incapable of developing "reasonable interface standards." After all, once the Commission decided to create the registration program, AT&T did more than any other party to draft the rules that ultimately were embodied in Part 68. The problem was that the carriers, then as now, had the incentive to favor the equipment they marketed over that which was available from non-carrier sources. Had the Commission believed that the telephone companies could be relied upon to judge fairly and dispassionately the potential of a competitor's product to "harm" the telephone network, Part 68 would never have been created.

There is nothing in the Commission orders establishing the registration program which supports U S West's claim that the Part 68 program "was intended to be a transitory regulatory program only." It is true that a concurring statement issued with one of the Commission's opinions in Docket No. 19528 expressed the "hope and expectation" that the industry circumstances which created the need for the registration program would change. But subsequent history has shown that the need for Part 68 has not diminished, and that in fact the Part 68 program

has produced the single greatest triumph of the Commission's common carrier policies over the past decade: the explosion of CPE competition, with its attendant benefits of lower prices, faster innovation, better quality and service, and increased choices for the consumer. This competition will continue to benefit the American public, but only if the Commission preserves the proper regulatory safeguards.

The emergence of the T1 Committee as a forum for the discussion of industry standards does nothing to obviate the need or Part 68. The T1 Committee is administered by the Exchange Carriers Standards Association; its standards are voluntary, not mandatory; it has no power to enforce users' rights to connect independently supplied equipment to the telephone network; and its total output to date consists of a handful of standards which do not even begin to prescribe the proper technical specifications for most interconnection situations. To make matters worse, the T1 Committee appears to be lending its credibility to certain carrier efforts to modify pro-competitive policies that have been laboriously established and repeatedly reaffirmed by the Commission.

U S West's viewpoint is not representative of industry sentiments on Part 68. In 1983, the Commission initiated Gen. Docket No. 83-114, which sought to determine the continuing need for numerous technical regulations, including Part 68. Those commentors which addressed this issue were virtually unanimous in expressing support for retaining the program (the sole exception being a single two-sentence discussion by one party which clearly did not understand the issues).

IDCMA's initial pleading in Gen. Docket No. 83-114 is attached. The points made there remain relevant today. Indeed, one issue discussed in IDCMA's pleading was the question whether jacks to effectuate standard means of interconnection should be prescribed in carriers' tariffs or in the Commission's Part 68 rules. Today, more than 10 years after the registration program was established and almost four years after the Commission decided to extend the registration program to digital transmission services (thus opening up yet another new area for competition, with the usual beneficial results), many carriers

still fail to install the proper jacks at the customer end of digital transmission lines.

For example, the Commission determined that RJ48 jacks should be used to permit connection of CSUs/DSUs on 1.544 Mbps and DDS-type digital transmission facilities, but the carriers frequently fail to place such jacks on the lines (or wire them incorrectly), thus hindering the connection of independently supplied CPE. This problem is proving to be persistent, notwithstanding frequent efforts to persuade carriers to use the Commission-prescribed jack. Inclusion of these jacks in Part 68, rather than merely in carriers' tariffs, may be the only way to ensure the availability of the proper means for connecting independently supplied CPE. This most certainly is not an issue that should be entrusted to the T1 Committee, a subcommittee of which is currently voting to adopt 1.544 Mbps interface specifications which violate the Commission's CPE policies.

Part 68, it bears repeating, has been and continues to be one of the Commission's greatest achievements. U S West's gratuitous statements to the contrary are utterly without merit.

Please let us know if you have any questions.

Sincerely,

James L. Casserly

Herbert E. Marks
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Enclosure

cc: Patrick J. Donovan
James R. Keegan
James M. Talens
William J. Tricarico (for inclusion in the public record -- RM-5945)
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter of A Re-Examination of Technical Regulations	)	Gen. Docket 83-114

COMMENTS OF THE INDEPENDENT
DATA COMMUNICATIONS MANUFACTURERS ASSOCIATION, INC.

The Independent Data Communications Manufacturers Association, Inc. ("IDCMA"), by its attorneys, hereby responds to the Notice of Inquiry and Proposed Rulemaking released by the Commission on March 18, 1983.

I. INTRODUCTION AND IDENTIFICATION OF IDCMA

In this proceeding, the Commission is reviewing a wide variety of its technical regulations to determine which, if any, should be eliminated or revised.[1/] This broad inquiry will involve a review of 21 separate Parts of the Commission's rules.[2/] IDCMA will address only the continuing need for Part 68, which establishes the

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1/ See A Re-Examination of Technical Regulations, Gen. Docket 83-114, Notice of Inquiry and Proposed Rulemaking, at ¶1 (released Mar. 18, 1983) [hereinafter cited as "Notice"].

2/ See id.

registration program for connection of terminal equipment, or customer-premises equipment ("CPE"), to the telephone network.

IDCMA strongly supports the retention of Part 68 in its present form. As an association of manufacturers of CPE used in computer (data) communications, IDCMA's primary goal is to promote opportunities for all manufacturers, including those not affiliated with common carriers, to compete in the CPE marketplace. The Commission, which shares this goal, has done much to promote CPE competition. Perhaps the single most important element of the Commission's efforts in this regard is the Part 68 registration program.

The Part 68 program promotes competition by requiring that interconnection to telephone services and facilities be nondiscriminatory. If a given terminal device complies with Part 68, it can be registered; if registered, it can be connected to the public switched network or to designated private line services. This approach provides needed certainty to carriers, equipment manufacturers, and consumers.

Uniform, mandatory, readily referenced technical standards for interconnection have accelerated the growth of CPE competition and brought numerous benefits to residential consumers, business users, equipment manufacturers, and the American economy. Further growth in CPE competition can be

expected as new services are brought under the registration program, new products are developed, and consumers adjust to the benefits of shopping for equipment in a competitive market rather than simply accepting what tne telephone company has to offer. Retention of Part 68 is essential to continue the progress toward a competitive CPE marketplace.

II. DISCUSSION

Tne courts and the Commission have consistently favored a policy of full competition in the CPE marketplace. In 1956, the United States Court of Appeals for the District of Columbia Circuit established consumers' rights to use the network in ways which are "privately beneficial without being publicly detrimental."[3/] This principle was reaffirmed by the Commission in the Carterfone decision.[4/] Yet carrier resistance to CPE competition persisted, employing a variety of devices: imposition of requirements for "protective coupling arrangements," opposition to the Commission's registration program, creation of new requirements for

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3/ Hush-A-Phone Corp. v. United States, 238 F.2d 266, 269 (D.C. Cir. 1956), on remand, 22 FCC 112, 113-14 (1957).

4/ Carterfone, 13 FCC 2d 420, 423, recon. denied, 14 FCC 2d 571 (1968).

carrier-provided customer-premises equipment (e.g., "network channel terminating equipment"), etc.[5/]

The establishment of the registration program was the single greatest step toward the promotion of CPE competition. Compliance with the technical and other standards assures that the equipment can be connected. The general rules are clearly specified, and everyone enjoys the fruits of that certainty:

--carriers are assured that their facilities will not be harmed by the connection of CPE;

--all manufacturers are assured an opportunity to market their products; and

--consumers (both residential and business) can more confidently select competitively supplied equipment.

5/ See, e.g., AT&T v. Litton Systems, Inc., 700 F.2d 787 (2d Cir. 1983) (sustaining antitrust liability predicated on requirement for "protective coupling devices"); United States v. AT&T, 524 F. Supp. 1336 (D.D.C. 1981) (denying, in most respects, defendants' motion to dismiss antitrust suit challenging various restraints on CPE competition); North Carolina Utilities Comm'n v. FCC, 552 F.2d 1036 (4th Cir.), cert. denied, 434 U.S. 874 (1977) (rejecting carrier arguments against establishment of FCC's equipment registration program); Petitions Seeking Amendment of Part 68, CC Docket No. 81-216, Third Notice of Proposed Rulemaking, FCC 83-268, (released June 14, 1983) [hereinafter cited as "Direct Connection Order"] (rejecting carrier arguments that "network channel terminating equipment" should be treated differently from other customer-premises equipment).

The several years since the adoption of Part 68 have demonstrated the wisdom of the Commission's decision to develop the registration program. Competition in terminal equipment is increasing, and numerous benefits to the public are resulting. As the Commission stated in its Second Computer Inquiry decision,

> We have repeatedly found that competition in the equipment market has stimulated innovation on the part of both independent suppliers and telephone companies, thereby affording the public a wider range of terminal choices at lower costs. See, for example, First Report in Docket No. 20003, 61 FCC 2d at 867; Phase II Final Decision and Order in Docket No. 19129, 64 FCC 2d 1, 602. Moreover, this policy has afforded consumers more options in obtaining equipment that best suits their communication or information processing needs. Benefits of this competitive policy have been found in such areas as improved maintenance and reliability, improved installation features including ease of making changes, competitive sources of supply, the option of leasing or owning equipment, and competitive pricing and payment options.6/

To this list of public benefits the Commission might have added two others: increased employment by American CPE manufacturers and a healthy contribution to America's balance of trade.

6/ Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384, 439 (footnote omitted), on reconsideration, 84 FCC 2d 512 (1980), on further reconsideration, 88 FCC 2d 512 (1981), aff'd sub nom. Computer & Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 103 S.Ct. 2109 (1983).

The Part 68 rules thus clearly serve a worthy purpose. Nonetheless, it might be questioned whether the "burdens" of compliance outweigh the benefits, and whether the rules have outlived their usefulness.[7/] The answer to both questions is a resounding "No."

Whatever "burdens" Part 68 may create are far outweighed by its benefits. Manufacturers are not burdened by having to assure that their equipment does not harm the network; they have no right and no incentive to produce equipment that does produce harms. What is important is that the rules to protect the network are clearly understood and apply equally to all CPE suppliers, whether or not they are affiliated with communications common carriers.[8/]

As for carriers, Part 68 simply imposes the duty not to discriminate in interconnection between equipment supplied by one vendor and equipment supplied by another. Thus, the only "burden" imposed on carriers is that they may not abuse their control over essential transmission facilities to create artificial advantages for their affiliated manufacturers or preferred suppliers. On the other hand, Part 68 provides carriers with ready assurance

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7/ See Notice, at ¶¶1, 4, 12.

8/ That carrier affiliates are subject to the same interconnection rules as other CPE suppliers helps assure that carriers cooperate in the development of reasonable standards.

that the equipment connected to their facilities will not harm those facilities. The benefits of Part 68 easily outweigh its burdens.

It is equally clear that Part 68 rules have not outlived their usefulness. Indeed, the registration program is as important now as it ever was. This was demonstrated quite recently when Part 68 was used as the vehicle to obtain a ruling which opened to competition a large segment of the CPE market that had been foreclosed to independent manufacturers by AT&T's insistence that "network channel terminating equipment" should not be subject to the same rules as other CPE.[9/]

Having served to produce the long-overdue policy determination that "NCTE," like other CPE, can be provided competitively, the Part 68 framework is now being employed to develop a consensus on the technical standards for connection to the digital transmission services with which "NCTE" is used. Given the degree of interoperation between this CPE and the network facilities used to provide digital transmission services, it is essential that Part 68 embody the standards for direct connection of CPE. Were the development of such standards to be merely "left to the

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9/ See Direct Connection Order, supra note 6, at ¶44.

marketplace," digital transmission services could be unreasonably designed, or modified, so as to make obsolete the equipment produced by independent manufacturers.

The registration program is increasingly important in this time of rapid change in the telecommunications industry. Only now are many customers beginning to consider owning their own CPE. They, like carriers and manufacturers, benefit from the certainty that Part 68 provides. The need for such certainty is made more acute by the restructuring of AT&T in compliance with the Computer Rules and the Modification of Final Judgment entered in United States v. AT&T. As America adjusts to a substantially different telecommunications marketplace, everyone benefits from the presence of uniform, agreed-upon, technical standards for interconnection.

Of course, as the specific configuration of telecommunications facilities changes, and as new services are brought under the registration program, specific amendments to Part 68 may be necessary; the rules cannot be cast in concrete. But such modifications as may be needed are best considered in a narrowly focused Part 68 rulemaking proceeding, rather than in a sweeping inquiry such as this one.

One final point may be worth mentioning. Periodically, the FCC convenes informal industry meetings to discuss Part 68. At the most recent FCC/Industry meeting, held

December 7, 1982, a representative of the Commission inquired whether there remained a need for the Part 68 rules to include detailed drawings of the plugs and jacks used to effect interconnection of CPE with the telephone network.[10/] The industry response was unanimous: the plug and jack specifications should remain in Part 68.[11/]

As this episode demonstrates, Part 68 enjoys broad industry support. The rules there stated are not seen as burdensome but as establishing basic, essential ground rules that assure opportunities for everyone to compete on an equal footing. Part 68 deservedly enjoys broad support.

III. CONCLUSION

IDCMA commends the Commission for its willingness to review its rules to determine their validity in a changing era. But as the above discussion reflects, the Part 68

10/ See 47 C.F.R. §68.500 et seq. (Connectors) (1982).

11/ Minutes of the 21st FCC/Industry Part 68 Meeting of Dec. 7, 1982, at ¶7 (Dec. 15, 1982).

rules perform a valuable service. IDCMA therefore urges that these rules be retained.

Respectfully submitted,

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MANUFACTURERS ASSOCIATION, INC.

By: _____
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August 5, 1983

CERTIFICATE OF SERVICE

I hereby certify that copies of Reply Comments of IDCMA were mailed this 24th day of December, 1987, by first class mail, postage prepaid, to the following individuals.

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