

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

) CC Docket No. 90-623

Computer III Remand Proceedings )  
Bell Operating Company Safeguards )  
and Tier 1 Local Exchange Company )  
Safeguards )

In the Matter of )

) CC Docket No. 92-256

Application of Open Network )  
Architecture and )  
Nondiscrimination Safeguards )  
to GTE Corporation )

COMMENTS OF THE UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association hereby responds to the Federal Communications Commission's March 10, 1994 request for additional comments on its Customer Proprietary Network Information ("CPNI") rules.

I. The CPNI Rules Primarily Address Competitive Concerns.

In adopting its CPNI rules, the FCC worked for several years to strike a balance between two policy goals. The Commission wished to encourage the former Bell Operating Companies (BOCs) and AT&T to market combinations of basic and enhanced services tailored to the needs of their customers. At the same time, the Commission wished to build in safeguards to

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address concerns raised by their competitors. These safeguards ultimately included restricting the use of CPNI and arranging for disclosure of CPNI to anyone to whom the customer wishes it disclosed.

Certainly, CPNI restrictions could be used by some customers as a mechanism to protect privacy. It is clear, however, that the rules were not designed for this purpose. Privacy is mentioned only in passing in the relevant FCC orders. In contrast, the Commission extensively discussed the goal of protecting competition through the CPNI rules while allowing customers to benefit from the integration of network services, enhanced services and CPE by the BOCs and AT&T.<sup>1</sup> For example, in its decision to implement CPNI rules for CPE, the Commission indicated a concern that structural integration "could give the BOCs an unfair advantage over competitors."<sup>2</sup>

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<sup>1</sup> See Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), Phase I Report and Order, 104 F.C.C. 2d 958 at ¶¶ 264-65 (1986), Phase II Report and Order, 2 FCC Rcd 3072 at ¶¶ 15-16 and 164-65 (1987), Phase II Memorandum Opinion and Order on Reconsideration, 3 FCC Rcd 1150 at ¶¶ 96-99 (1988), Phase I and II Memorandum Opinion and Order on Further Reconsideration and Second Further Reconsideration, 4 FCC Rcd 5927 at ¶ 27 (1989); Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 1 at ¶ 402 (1988); Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, Report and Order, 2 FCC Rcd 143 at ¶ 70 (1987), Memorandum Opinion and Order on Reconsideration, 3 FCC Rcd 22 at ¶¶ 20-22 (1987) (CPNI rules imposed "for competitive purposes"); Computer III Remand Proceedings: Bell Operating Company Safeguards: and Tier I Local Exchange Company Safeguards, 6 FCC Rcd 7571 (1991).

<sup>2</sup> 2 FCC Rcd 143 at ¶ 65 (1987).

The CPNI rules were designed by the FCC to address competitive issues in particular markets by particular participants. But privacy issues can arise when any business -- not only a telephone company -- releases information about a customer or uses that data in a way that the customer finds objectionable. The CPNI rules do not apply to the vast majority of telecommunications providers -- to say nothing of the millions of other businesses with customer information. For example, CPNI regulations are not relevant to catalogue shopping companies, retail stores, credit card companies, on-line computer services, interexchange carriers, competitive access providers, or telecommunications resellers. Yet all of these businesses use information about customers in a variety of ways.

Customers may be more concerned when non-telephone companies fail to meet their privacy expectations because those companies may hold data that is more sensitive than information about customers' use of local exchange services. In its recent Notice of Inquiry on privacy, the NTIA raised this point.<sup>3</sup> The NTIA correctly observed that "enhanced information and computing technology, and the greater interconnectivity of telecommunications networks, will allow greater access to a broad range of record systems ...".<sup>4</sup> The NTIA cited

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<sup>3</sup> Notice of Inquiry on Privacy Issues Relating to Private Sector Use of Telecommunications-Related Personal Information published by the National Telecommunications and Information Administration at 59 Fed. Reg. 6842 (February 11, 1994).

<sup>4</sup> Id. at ¶ 40

telephone information, but also health, financial, academic, government, and employment information as being areas the public considers sensitive.<sup>5</sup> Because the CPNI rules apply to so few companies and only to "telephone" data, they are not the right starting point for thinking about the broader privacy issues raised by information technology.

## II. The FCC Need Not Amend The CPNI Rules Because of Joint Ventures.

In the fall of 1992, the Commission had an opportunity to examine privacy issues in a broad context. That opportunity occurred when the Commission adopted rules implementing the Telephone Consumers Protection Act (TCPA). In passing the TCPA, Congress recognized the legitimacy of the telemarketing industry but imposed some restrictions on telemarketing methods to protect customer privacy.<sup>6</sup>

The Commission concluded when implementing the TCPA legislation that, "... solicitation to someone with whom a prior business relationship exists does not adversely affect subscriber privacy interests. Moreover, such a solicitation can be deemed to be invited or permitted by a subscriber in light of the business relationship."<sup>7</sup> The Commission also found "... that a consumer's established business relationship

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5 Id.

6 Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 7 FCC Rcd 8752, 8753 (1992).

7 Id. at 8770

with one company may also extend to the company's affiliates and subsidiaries."<sup>8</sup>

New mergers, acquisitions, and alliances in the communications industry are announced practically every day. Industry players recognize that a single company cannot satisfy all of customers' needs for information products and services. Typically, however, the relationship that each joint venture participant has with its customers is highly valued. Joint venture participants have no incentive to violate customers' privacy expectations. In fact, they have every incentive to ensure that customers view the venture positively. The conclusions that the FCC reached in the TCPA docket about sharing information with affiliates is valid for joint ventures.

### III. Customer Privacy Complaints About CPNI Are Rare.

To USTA's knowledge, the FCC has not received customer complaints regarding improper use of CPNI. The Commission should not further restrict the use of records or transactional information when there is no evidence from customers that a privacy problem exists. It should not repeat its recent actions in the GTE case. There, the CPNI rules were extended to GTE absent any evidence of customer complaints on privacy or competitive grounds.

GTE's voluntary privacy policies and other customer safeguard policies were working well. In spite of many months for complaints to be placed on the record, only three

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<sup>8</sup> Id. at 8771.

complaints relating to any of the ONA safeguards were identified in the GTE case. None involved privacy issues; all three were related to joint marketing issues and were raised by ATSI. GTE demonstrated that these three complaints were without merit. The GTE experience is a strong recommendation for voluntary practices when one considers the three complaints in the context of GTE's 17 million access lines and almost 20 million annual customer contacts.<sup>9</sup>

Regulations applicable only to the BOCs and GTE that restrict the use of residential and single line business customer information would not even begin to address privacy concerns in an effective manner. Rather, if the FCC determines that some action is appropriate to protect these customers' privacy, it should apply the same regulations to all carriers that offer substitutable service in the markets served by the BOCs and GTE. Imposing regulation on only one competitor distorts the market by increasing that competitor's costs and the complexity of its interaction with customers while similarly situated firms have no such burden.

In 1991, the Commission extended the CPNI rules to require the customer's explicit authorization for marketing enhanced services to large business customers. The benefits of this change to prior authorization are yet to be demonstrated. Even prior to that 1991 change, the CPNI rules greatly complicated the marketing and sales process for the BOCs. In

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<sup>9</sup> Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation CC Docket No. 92-256, GTE's Reply Comments (March 24, 1993)

addition, many of those companies' mechanized systems had to be substantially altered to comply with the rules. Customers are expected to understand which services and products are subject to which set of marketing rules. Customer confusion persists despite significant educational efforts.

The Commission has asked whether the CPNI rules should be expanded to the other LECs. USTA continues to take the position that the rules should not be expanded to the other LECs. The size and resources of these companies are such that they would either not be able to provide the service to the customer because it would be too costly to meet the requirements or the price and administration would be too onerous to the customer if the LEC were to provide it. For example, the LEC General Manager, regulated customer service representative, the marketing representative and the installer/repairman are often the same person or are shared responsibilities among only a few individuals. Accommodation of the simplest CPNI rules in this situation would be administratively and cost prohibitive. Clearly, it would be a disservice to customers to expand the CPNI requirements to these LECs.

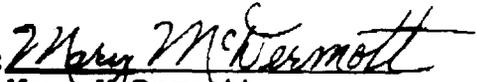
Voluntary standards, applicable to all of a company's products and services, are preferred by both consumers and telecommunications providers. The Commission should permit the industry to meet privacy concerns on that basis. Only if the FCC receives more than a de minimus number of complaints should it consider adopting further rules. Even in that case, the CPNI rules are not the appropriate starting point for the reasons discussed above.

IV. CONCLUSION

For the reasons stated herein, the FCC should not extend the scope or substance of its CPNI rules.

Respectfully submitted,

United States Telephone  
Association

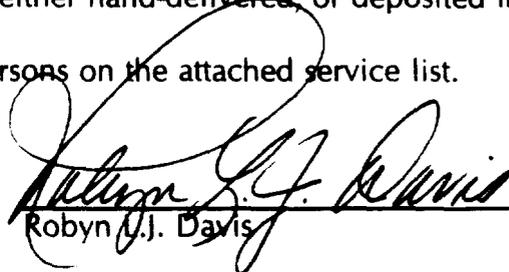
By:   
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Dated: April 11, 1994

**CERTIFICATE OF SERVICE**

I, Robyn L.J. Davis, do certify that on April 11, 1994 copies of the Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

  
Robyn L.J. Davis