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

In the Matter of	)	
	)	
Computer III Remand Proceeding	)	CC Docket No. 90-623
	)	
Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation	)	CC Docket No. 92-256

REPLY COMMENTS OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL

The comments of many parties highlight the enormous advantage given to the BOCs and GTE by virtue of their discriminatory practices regarding access to customer proprietary network information ("CPNI").[1] This advantage is even greater in the payphone marketplace. As American Public Communications Council ("APCC") noted in its initial comments, even under the existing CPNI rules, independent vendors of customer premises equipment ("CPE") and enhanced services have some protection against discriminatory CPNI practices. Because of the Commission's nine-year-old ruling excluding payphones from the Computer II rules,[2]

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[1] See Comments of CompuServe, Inc.; Comments of Centex Telemanagement, Inc. ("Centex"); Comments of Independent Data Communications Manufacturers Association, Inc. ("IDCMA"); Comments of Prodigy Services Company; Comments of Cox Enterprises; Comments of California Bankers Clearinghouse, New York Clearinghouse Association, and MasterCard; Comments of Information Industry Association; Comments of Tele-Communications Association; Comments of the Newspaper Association of America; Comments of the Public Utility Commission of Texas; Comments of the National Association of Regulatory Utility Commissioners.

[2] As APCC noted in its initial comments, in 1988 the Public Telephone Council filed a petition for a declaratory ruling that BOC public payphones are CPE and thus should be provided on an unbundled basis. Expedited Petition for Declaratory Ruling of the Public Telephone Council, In the Matter of The Public Telephone Council Petition for Declaratory Ruling that Bell Operating Company

however, the CPNI safeguards do not specifically protect independent public payphone ("IPP") providers. Thus, while enhanced service providers such as Centex Telemanagement Management, Inc. ("Centex") at least can protect their own CPNI from being accessed by LECs, the CPNI rules do not expressly provide IPP providers the right to demand that their CPNI be withheld from LECs' payphone marketers. As a result, even if an IPP provider specifically requests that its CPNI not be disclosed to the LECs' payphone operations, FCC regulations do not expressly prevent the LEC payphone marketers from using CPNI in marketing the LECs' competitive services.[3]

As APCC noted in its initial comments, the Commission has consistently recognized the right of enhanced service providers, as "customers" of LECs, to object to LEC use of CPNI regarding the network services they have ordered. At a minimum, IPP providers should have the same right regarding the network services they have ordered.

The Independent Data Communications Manufacturers Association, Inc. ("IDCMA") underscored APCC's point that CPNI is commercially valuable information that gives LECs an unfair advantage over their competitors, thereby impairing operation of the competitive

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Pay Telephones Are Customer Premises Equipment for Regulatory Purposes (filed July 18, 1988). To this date, the Commission has not yet ruled on the merits of that petition.

[3] In pointing out the absence of an express regulation regarding the CPNI of IPPs, APCC is not in any way suggesting that abusive CPNI practices by a LEC are consistent with Title II of the Communications Act.

market.[4] CompuServe, too, provided an extensive description of the advantages maintained by LECs' use of their unique monopoly position to access competitively sensitive information.[5] According to CompuServe, LECs can use CPNI to compile a complete list of an unaffiliated vendor's customers and can focus their marketing efforts on the vendor's customers without having to go through the same marketing efforts and incurring the same costs that the independent vendor originally had to expend to market its products and services.[6]

The comments of CompuServe, Prodigy, and Centex also support APCC's contention that the Commission's discriminatory CPNI access policy is an open invitation to engage in "unhooking" and other practices the Commission has already deemed to be unjust and unreasonable. Centex stated that unlimited LEC access to exchange customers' CPNI has caused Centex extensive economic damage. LECs have utilized CPNI to target Centex's clients for "counter-marketing" efforts and other anti-competitive behavior.[7] According to Centex, the LECs use Centex's request for CPNI as a "trigger" for identifying market opportunities with Centex clients; use CPNI related to Centex clients to tailor specific sales presentations to existing Centex clients; and disclose CPNI from their basic

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[4] Comments of IDCMA at 3.

[5] Comments of CompuServe at 6-7.

[6] Comments of CompuServe at 6-7.

[7] Comments of Centex at 2.

exchange operations to LEC personnel who market competing services.[8]

Similar practices are used by LECs to target IPP providers' customers -- location owners -- for such "counter-marketing" efforts. The difference is that the existing rules do not expressly protect IPP providers even when the IPP provider, as the LEC's customer, affirmatively objects to disclosure of CPNI. The Commission must afford IPP providers protection against such predatory practices.

Like Centex and CompuServe, IPP providers are totally dependent upon the LEC for the local exchange lines that they use to provide service.[9] LECs use their role as a monopoly supplier to accumulate CPNI regarding customers who, as IPP providers, are also competitors of the LECs. Thus, LECs use their position as providers of bottleneck monopoly exchange services to create an unfair advantage in markets where they face competition.

There is no rational basis for failing to extend CPNI protection to IPP providers. The competitive value of CPNI is no less in the case of payphones than for CPE and enhanced services. There is no reasonable basis for allowing LEC payphone marketing personnel access to CPNI information without the customer's authorization -- and even against the customer's objections --

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[8] Comments of Centex at 8-11.

[9] See comments of Centex at 6; Comments of CompuServe at 6.

while denying the LECs' competitors access to the same information under equivalent circumstances.

None of the rationales put forth by the LECs in their attempts to defend policies giving them unfettered access to CPNI are applicable in the context of the payphone market. The LECs' claims that pre-existing customer relationships justify the lack of a uniform prior authorization requirement are particularly baseless in this situation.[10] In the payphone market, the LECs' customers are not only captive customers who have no choice but to purchase exchange services from the LECs;[11] they are competitors of the LECs who have absolutely no wish to allow LEC payphone personnel to use CPNI to target their locations.

The current rules regarding access to CPNI by LECs and their competitors in the payphone market grossly discriminate against IPP providers. In terms of their express coverage, the rules deny even the minimal (and inadequate) protection afforded providers of CPE and enhanced services in terms of access to CPNI. As the comments indicate, even the protection granted to providers of CPE and enhanced services is inadequate to protect those competitors from discriminatory practices. The Commission should equalize access to CPNI by expressly (1) prohibiting disclosure of CPNI without authorization to <u>either</u> the LECs' payphone marketers <u>or</u> IPP providers; or (2) allowing <u>both</u> the LECs <u>and</u> their competitors

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[10] <u>See, e.g.</u>, Comments of US West at 7; Comments of Bell Atlantic at 2.

[11] See Comments of CompuServe at 8-9.

access to payphone-specific information. At a minimum, however, the Commission should require the LECs to prohibit their payphone marketing personnel from accessing CPNI of an IPP provider when the IPP provider -- who is the customer of the LEC -- has specifically requested that the CPNI be withheld.

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May 19, 1994

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of May, 1994, I caused a true copy of the Reply Comments of the American Public Communications Council to be served upon the parties listed below.

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