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CTIA

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Telecommunications
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RECEIVED

February 8, 1996

FEB 8 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

Ex Parte Contact: Reciprocal Termination
CC Docket Nos. 95-185 94-54

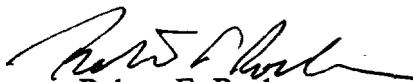
Dear Mr. Caton:

On Thursday, February 8, 1996, Randall S. Coleman, Vice President for Regulatory Policy and Law, CTIA, sent the attached letter and supporting documents to the listed FCC personnel.

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter and the attachments are being filed with your office.

If there are any questions in this regard, please contact the undersigned.

Sincerely,


Robert F. Roche

Attachments

No. of Copies rec'd 0+1
List ABCDE

cc: Rosalind Allen, Associate Bureau Chief, WTB
Mr. Larry Atlas, Associate Bureau Chief, CCB
Mr. Rudy Baca, Legal Advisor, Commissioner James H. Quello
Honorable Andrew C. Barrett, Commissioner
Ms. Lauren Belvin, Senior Legal Advisor, Commissioner James H. Quello
Mr. Lyndon Boozer, Special Assistant, OLIA
Mr. James Casserly, Senior Legal Advisor, Commissioner Susan Ness
Honorable Rachelle B. Chong, Commissioner
Ms. Jackie Chorney, Assistant Bureau Chief, WTB
Mr. John Cimko, Chief, Policy Division, WTB
Mr. James Coltharp, Chief Economist, WTB
Mr. Howard Davenport, Chief, Enforcement Division, WTB
Mr. David Furth, Acting Chief, Commercial Wireless Division
Mr. Julius Genachowski, Counsel, Chairman Reed E. Hundt
Mr. Don Gips, Deputy Chief, OPP
Mr. Ralph Haller, Deputy Chief, WTB
Ms. Judith Harris, Director, Office of Legislative Affairs
Honorable Reed E. Hundt, Chairman
Mr. Joseph Farrell, Chief Economist, OPP
Ms. Gina Keeney, Chief, CCB
Mr. William Kennard, General Counsel, FCC
Ms. Linda Kinney, Attorney, Commercial Wireless Bureau
Mr. Blair Levin, Chief of Staff, Chairman Reed E. Hundt
Ms. Kathleen Levitz, Deputy Chief, CCB
Ms. Jane Mago, Senior Legal Advisor, Commissioner Rachelle B. Chong
Mr. Steve Markendorff, Chief, Broadband Branch, WTB
Mr. Jay Markley, Jr., Telecommunications Analyst, WTB
Ms. Mary McManus, Legal Advisor, Commissioner Susan Ness
Mr. Richard Metzger, Deputy Chief, CCB
Ms. Ruth Milkman, Senior Legal Advisor, Chairman Reed E. Hundt
Mr. John Nakahata, Legal Assistant, Chairman Reed E. Hundt
Honorable Susan Ness, Commissioner
Ms. Sally Novak, Chief, Legal Branch, WTB
Mr. Myron Peck, Deputy Chief, Enforcement Division, WTB
Dr. Robert Pepper, Chief, OPP
Mr. Daniel Phythyon, Senior Legal Advisor, CCB
Honorable James H. Quello, Commissioner
Mr. Greg Rosston, Deputy Chief Economist, OPP
Mr. David Siddall, Legal Advisor, Commissioner Susan Ness
Mr. Andrew Sinwell, Telecommunications Policy Analyst, OPP
Ms. Lisa Smith, Legal Advisor, Commissioner Andrew C. Barrett
Mr. David Solomon, Deputy General Counsel, FCC
Mr. Peter Tenhula, Special Counsel, FCC
Mr. Gerald Vaughan, Deputy Bureau Chief of Operations, WTB
Mr. Michael Wack, Deputy Chief, Policy Division, WTB

Ms. Michele Farquhar, Chief, WTB
Ms. Karen Watson, Director, Office of Public Affairs
Mr. Richard Welch, Legal Advisor, Commissioner Rachelle B. Chong
Mr. Stanley Wiggins, Staff Attorney, WTB
Mr. Christopher Wright, Deputy General Counsel for Litigation, FCC
Ms. Suzanne Toller, Legal Advisor, Commissioner Rachelle B. Chong
Mr. Todd Silbergeld, Legal Advisor, Commissioner Andrew C. Barrett
Mr. David P. Wye, Advisor, WTB
Mr. Michael K. Hamra, Legal Advisor, WTB
Ms. Karen Brinkmann, Associate Bureau Chief, WTB



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February 8, 1996

CTIA

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Randall S. Coleman
Vice President for
Regulatory Policy and Law

Dear

The following is attached for your information:

- CTIA's "Comments and Opposition to the Requests for Extension" in CC Docket Nos. 95-185 (*Interconnection Between Local Exchange Carriers and CMRS Providers*) & 94-54 (*Equal Access and Interconnection Obligations Pertaining to CMRS Providers*) and
- The U.S. Court of Appeals for the Ninth Circuit's January 31, 1996 Decision in *The People of California v. FCC*.

In the former, CTIA does not oppose the modest extension requested by NARUC, but opposes GTE's request for significant delay.

In the latter, the Ninth Circuit upholds the FCC's decisions regarding Caller ID. Of particular importance, in CTIA's view, the Ninth Circuit also held that the FCC's "free passage rule," which requires telephone carriers using Common Channel Signaling System 7 (SS7) to deliver calling party numbers (or CPN) to other telephone carriers **without charge**, is not arbitrary or capricious. CTIA believes this finding by the Court strengthens the FCC's tentative conclusion that compensation for the termination of calls transferred between LEC and CMRS networks should be priced on a "bill and keep" basis (*i.e.*, that each carrier reciprocally terminates calls from the other at **no charge**).

Please call if you have questions on the attached information.

Sincerely,

Randall S. Coleman

Attachments

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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STAMP
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FEB - 7 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Interconnection Between Local Exchange)
Carriers and Commercial Mobile Radio) CC Docket 95-185
Service Providers)
)
Equal Access and Interconnection) CC Docket 94-54
Obligations Pertaining to Commercial)
Mobile Radio Service Providers)

**COMMENTS AND OPPOSITION TO REQUESTS FOR EXTENSION OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Cellular Telecommunications Industry Association ("CTIA")¹, pursuant to Section 1.46 of the Commission's rules, 47 C.F.R. § 1.46, hereby submits its Comments on the "Request to Extend and Modify the Comment Cycle" ("Request") in the above-captioned proceeding filed by the National Association of Regulatory Utility Commissioners ("NARUC"), and its Opposition to the "Motion for Extension of Time" ("Motion") to file comments and reply comments filed by GTE Service Corporation ("GTE").²

CTIA does not oppose the extensions sought by NARUC, but does oppose the extensions sought by GTE. Briefly summarized,

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, including cellular, personal communications services ("PCS"), enhanced specialized mobile radio, and mobile satellite services.

² NARUC's request was filed February 2, 1996; GTE's was filed February 5, 1996.

NARUC's Request for a four day extension to file initial comments³ and a 15 day extension to file reply comments in this proceeding is relatively modest and seeks to resolve concrete timing obstacles beyond its control. On the other hand, GTE's request for 30 day extensions to both the comment and reply schedule would significantly delay the Commission's consideration of this important issue, thereby undermining the timely resolution of CMRS-LEC interconnection, and is premised upon a vague need for more time to "adequately address these issues."⁴ For these reasons, and as more fully set forth below, CTIA has no objection to NARUC's Request, but opposes GTE's Motion.

In support of its Request for a four day extension of the comment deadline in this proceeding, NARUC states that its winter meetings, at which NARUC will adopt a position on the issues raised in the Commission's NPRM, will not conclude until February 28, 1996.⁵ In light of this pre-existing schedule, NARUC requests an extension of four days (and only two days after its winter meeting ends) in which to complete and file comments on these issues. CTIA believes that this request is suited to the underlying basis for the request and reasonable.

³ NARUC twice states that it requests a four day extension of the comment period (NARUC Request at 1 and 5). Four days from the present February 26, 1996 deadline is March 1, 1996. However, NARUC also twice indicates that the new filing deadline for initial comments would be February 28, 1996, only two days beyond the present deadline. CTIA has no objection to a minimal extension until February 28, 1996 or March 1, 1996.

⁴ GTE Motion at 2.

⁵ NARUC Request at 4.

Regarding the deadline for reply comments, NARUC notes that the present 15 day cycle is rather compressed considering the interest this proceeding has generated and the fact that jurisdictional issues of particular importance to NARUC's membership are central issues in this proceeding.⁶ In this regard, the 15 day reply cycle substantially differs from the 30 day reply cycle afforded interested parties in other recent far-reaching and complex proceedings.⁷ Moreover, NARUC states that it frequently takes a week for some of its western members to receive copies of comments, and that many of its state commission members have procedural rules requiring several days notice for approval of pleadings before they can be filed.⁸ For these reasons, NARUC requests that the Commission extend the reply comment period by 10 days.⁹ CTIA believes that this request is reasonable and supported by good cause.

⁶ NARUC Request at 4.

⁷ NARUC Request at 5. NARUC cites Numbering Portability (CC Docket No. 95-116) and the "Emerging Competition" Price-Cap proceeding (CC Docket Nos. 94-1, 93-124, 93-197) as examples. Id.

⁸ Id.

⁹ NARUC requests that the reply deadline be set at March 24, 1996. Because this date falls on a Sunday, CTIA has no objection to extending the reply comment deadline to Monday, March 25, 1996, or Tuesday, March 26, 1996 (if the Commission adopts the March 1, 1996, comment deadline).

On the other hand, GTE's Motion will serve only to delay this important proceeding unnecessarily.¹⁰ GTE's first proffered basis for extending the comment deadlines, that the "NPRM seeks comments and detailed information on numerous issues," is nothing more than a recitation of the issues GTE believes are implicated by this proceeding. GTE offers no explanation as to why it is unable to address these issues in the time provided. From CTIA's perspective, GTE's motion simply reflects a lack of motivation. Interconnection is crucial to wireless carriers. Therefore, wireless carriers are intimately familiar with the details of their interconnection arrangements. GTE's stated inability to address these issues in a timely fashion merely reflects the fact that its interests are served by delay in this proceeding, not action.

Moreover, Section 1.46(a) of the Commission's rules expressly provides that extensions are not routinely granted.¹¹ Considering the complexity of the problems addressed in most, if at all, of the NPRMs released by the Commission, grant of an extension based on vague assertions of the need to address "numerous issues" or gather "detailed information"¹² would render such extensions routine indeed.

¹⁰ GTE's requested comment date is March 26, 1996, with replies due April 26, 1996. The pleading cycle will conclude under NARUC's extension request as modified herein on March 26, 1996.

¹¹ 47 C.F.R. § 1.46.

¹² GTE Motion at 1.

GTE's second basis for its motion is that the imminent amendment of the Communications Act of 1934 ("Communications Act") by the Telecommunications Act of 1996 ("1996 Act") raises issues that the Commission should consider in this NPRM. GTE specifically references sections 251 and 252 of the 1996 Act, provisions which deal generally with LEC obligations to unbundle their networks and to provide interconnection to competitive local exchange carriers. However, neither of these sections, nor any other provision of the 1996 Act, directly addresses LEC-CMRS interconnection and with good reason. For the purpose of this proceeding, the jurisdictional basis for the proposals set forth in the NPRM is section 332 of the Communications Act, a provision which still retains its full force upon the effective date of the 1996 Act. Moreover, prompt adoption of reciprocal termination (i.e., bill-and-keep) to govern the interconnection relationship between CMRS providers and LECs will further the underlying purposes set forth in §§ 251 and 252, i.e., to ensure the quick removal of any regulatory impediments to the realization of a workably competitive local exchange. In sum, the 1996 Act presents no need for Commission reconsideration of the proposals set forth in the NPRM, and the 1996 Act supports prompt adoption of reciprocal termination.

Indeed, if anything, passage of the 1996 Act makes imperative timely Commission consideration of the NPRM and comments in response thereto. Delay of this proceeding to the extent sought by GTE could result in indefinite delay of adequate

LEC-CMRS interconnection rules as the Commission turns its attention to 1996 Act proceedings with tight statutory deadlines. In fact, any unnecessary delay in the adoption of reciprocal termination (i.e., bill-and-keep) will in turn retard the full realization of the competitive potential of CMRS.

CONCLUSION

For these reasons, CTIA respectfully requests (1) that the Commission grant NARUC's Request for an extension and (2) that the Commission deny GTE's Motion.

Respectfully submitted,

**CELLULAR TELECOMMUNICATIONS
INDUSTRY ASSOCIATION**

Michael F. Altschul (mfs)

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Vice President, General Counsel

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Of Counsel

February 7, 1996

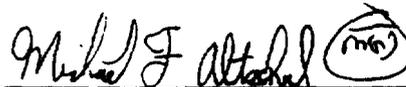
Certificate of Service

I, Michael F. Altschul, hereby certify that a copy of Comments and Opposition to Requests for Extension of The Cellular Telecommunications Industry Association, was hand delivered this 7th day of February, 1996 to each of the following:

Paul Rodgers, Esquire
Charles D. Gray, Esquire
James Bradford Ramsay, Esquire
National Association of
Regulatory Utility Commissioners
1201 Constitution Avenue, N.W.
Room 1102
Washington, D.C. 20423

and

Gail L. Polivy, Esquire
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036



Michael F. Altschul

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

THE PEOPLE OF THE STATE OF
CALIFORNIA; PUBLIC UTILITIES
COMMISSION OF THE STATE OF
CALIFORNIA;

Petitioners.

PENNSYLVANIA PUBLIC UTILITY
COMMISSION ("PAPUC"); SOUTHERN
CALIFORNIA COALITION ON BATTERED
WOMEN; TOWARD UTILITY RATE
NORMALIZATION ("TURN");
CONSUMER FEDERATION OF AMERICA;
CONSUMER ACTION; THE NATIONAL
ASSOCIATION OF SOCIAL WORKERS
("NASW"); THE CALIFORNIA
ALLIANCE AGAINST DOMESTIC
VIOLENCE; THE FAMILY VIOLENCE
PREVENTION FUND;

Petitioners-Intervenors.

v.

FEDERAL COMMUNICATIONS
COMMISSION; UNITED STATES OF
AMERICA;

Respondents.

No. 94-70197

FCC No.
94-59

OPINION

US WEST COMMUNICATIONS; MCI
TELECOMMUNICATIONS CORPORATION;
AD HOC TELECOMMUNICATIONS
USERS COMMITTEE ("COMMITTEE");
AT&T CORPORATION; THE
NATIONAL ASSOCIATION OF
REGULATORY UTILITY
COMMISSIONERS; NATIONAL
ASSOCIATION OF CONSUMER
ADVOCATES (NASUCA),
AMERITECH OPERATING COMPANIES;
SOUTHWESTERN BELL TELEPHONE
COMPANY; PACIFIC BELL; UNITED
STATES TELEPHONE ASSOCIATION
(USTA); BELL SOUTH CORPORATION;
Respondents-Intervenors.

THE PEOPLE OF THE STATE OF
CALIFORNIA; PUBLIC UTILITIES
COMMISSION OF THE STATE OF
CALIFORNIA;

Petitioners,

CONSUMER FEDERATION OF AMERICA;
SOUTHERN CALIFORNIA COALITION ON
BATTERED WOMEN; NATIONAL
ASSOCIATION OF REGULATORY
UTILITY COMMISSIONERS
("NARUC"); TOWARD UTILITY
RATE NORMALIZATION ("TURN");
CALIFORNIA ALLIANCE AGAINST
DOMESTIC VIOLENCE; THE FAMILY
VIOLENCE PREVENTION FUND
("FUND"); CONSUMER ACTION;
NATIONAL ASSOCIATION OF SOCIAL
WORKERS ("NASW") and THE
PENNSYLVANIA PUBLIC UTILITY
COMMISSION ("PAPUC");

Petitioners-Intervenors,

v.

FEDERAL COMMUNICATIONS
COMMISSION; UNITED STATES OF
AMERICA;

Respondents,

No. 95-70470

FCC No.
91-281

BELLSOUTH TELECOMMUNICATIONS,
INC. ("BELLSOUTH"); SOUTHWESTERN
BELL TELEPHONE COMPANY;
NATIONAL TELEPHONE COOPERATIVE
ASSOCIATION; GTE CALIFORNIA
INCORPORATED (HEREINAFTER
"GTEC"); MCI
TELECOMMUNICATIONS CORPORATION;
THE UNITED STATES TELEPHONE
ASSOCIATION ("USTA"); US WEST
COMMUNICATIONS; AD HOC
TELECOMMUNICATIONS USERS
COMMITTEE;

Respondents-Intervenors.

AT&T CORPORATION,

Petitioners.

MCI TELECOMMUNICATIONS
CORPORATION; CONSUMER
FEDERATION OF AMERICA; CONSUMER
ACTION; NATIONAL ASSOCIATION OF
SOCIAL WORKERS; CALIFORNIA
ALLIANCE AGAINST DOMESTIC
VIOLENCE; THE FAMILY VIOLENCE
PREVENTION FUND; SOUTHERN
CALIFORNIA COALITION OF BATTERED
WOMEN;

Petitioners-Intervenors.

v.

FEDERAL COMMUNICATIONS
COMMISSION; UNITED STATES OF
AMERICA;

Respondents.

SOUTHWESTERN BELL TELEPHONE
COMPANY ("SOUTHWESTERN BELL");
NATIONAL TELEPHONE COOPERATIVE
ASSOCIATION; BELL ATLANTIC
TELEPHONE COMPANIES ("BELL
ATLANTIC"); AMERITECH, GTE
SERVICE CORPORATION ("GTE");

Respondents-Intervenors.

No. 95-70519

FCC No.
95-187

COMPETITIVE TELECOMMUNICATIONS
ASSOCIATION;

Petitioner,

CONSUMER FEDERATION OF AMERICA,
CALIFORNIA ALLIANCE AGAINST
DOMESTIC VIOLENCE & THE FAMILY
VIOLENCE PREVENTION FUND;

Petitioners-Intervenors,

v.

FEDERAL COMMUNICATIONS
COMMISSION; UNITED STATES OF
AMERICA;

Respondents,

No. 95-70571

FCC No.
92-281

**Petitions to Review Orders
of the Federal Communications Commission**

**Argued and Submitted
November 16, 1995—San Francisco, California**

Filed January 31, 1996

**Before: Mary M. Schroeder and Arthur L. Alarcon, Circuit
Judges, and Robert H. Whaley,* District Judge.**

Opinion by Judge Alarcon

*Honorable Robert H. Whaley, United States District Judge, for the Eastern District of Washington, sitting by designation.

SUMMARY

Government Law/Communications

The court of appeals denied petitions for review of orders of the Federal Communications Commission (FCC). The court held that an FCC rule that subscribers who fail to choose the method to prevent disclosure of their nonpublished telephone numbers, when Caller ID service becomes effective, must be served with a "per call blocking" system, does not arbitrarily and capriciously preempt a Public Utilities Commission of the State of California (CPUC) rule that emergency service organizations and subscribers with nonpublished numbers who fail to communicate their choice between per call blocking and "per line blocking" be served with a system that blocks disclosure on all calls. The court also held that the FCC's preemption order did not violate the federal constitution. Finally, the court further held that the FCC's "free passage rule," which requires telephone carriers using Common Channel Signalling System 7 (SS7) to deliver calling party numbers (CPN) without charge to other telephone carriers, is not arbitrary and capricious.

Provision of telephone services is divided between local exchange carriers (LECs) and long distance carriers (LDCs). Many LDCs have invested in SS7 by installing it in their own networks and by establishing SS7 interconnections with LECs to allow passage of CPN.

The FCC undertook efforts to promote the availability of interstate Caller ID, a service that permits a customer who receives a call to see the number of the person who placed the call unless the calling party blocks disclosure of the number. CPN is transmitted by means of SS7.

Petitioner the Public Utilities Commission of the State of California (CPUC) authorized California LECs to offer intra-

state Caller ID service. The decision of the CPUC provides that each subscriber shall have a choice between "per call blocking" and "per line blocking" without cost. Per call blocking requires the customer to dial *67 each time a call is made to protect his or her privacy. Per line blocking is a system that blocks disclosure on all calls unless the calling party dials *82. The CPUC determined that emergency service organizations and subscribers who pay monthly charges for nonpublished telephone numbers, and who do not communicate their choice, will receive per line blocking service. Other subscribers who do not make a choice will receive per call blocking service.

The FCC recognized that some IXCs were building the SS7 facilities needed to transmit CPN and other services on interstate calls. The FCC determined that it would be in the public interest to adopt rules to encourage and regulate the development of SS7 services. The FCC released a First Report and Order (First R&O), in which the FCC concluded that interstate passage of CPN could bring a variety of benefits to consumers and promote technological innovation that would foster economic efficiency. The FCC determined that inconsistent state regulatory schemes for CPN blocking options and uncertainty regarding compensation for the interstate transmission of CPN created investor uncertainty and customer confusion about CPN. The FCC determined that making per call blocking available on all interstate calls best accommodates the interests of calling and called parties. The First R&O provided for preemption of state regulation of Caller ID that prohibited per call blocking for interstate calls. The FCC also proposed adoption of a rule requiring carriers to transport CPN to other carriers free of charge; the agency found that the transmission of CPN imposed only *de minimis* additional costs on IXCs who had already invested in SS7.

The CPUC, AT&T Corp., and Competitive Telecommunications Association (CompTel) filed separate petitions for reconsideration of the First R&O. The FCC issued a reconsid-

eration order (Second R&O). The FCC narrowed its preemption of state public utilities blocking regulations by permitting subscribers to choose per line blocking or per call blocking on interstate calls, provided that all carriers were required to adopt a uniform method for overriding blocking on any particular call. The FCC also preempted the CPUC's regulation that nonpublished subscribers and emergency service organizations that do not make a selection would be assigned per line blocking. The FCC stated that California's default policy thwarted and impeded federal goals for interstate CPN-based services. The FCC also concluded that carriers should not be permitted to charge other carriers for transmission of CPN.

The CPUC filed two petitions seeking review of the FCC's decision denying reconsideration of the FCC's rule that subscribers who fail to choose the method to prevent disclosure of their nonpublished telephone numbers, when Caller ID service becomes effective, must be served with per call blocking to protect their privacy. The CPUC argued that the rule violates federal constitutional rights, and arbitrarily and capriciously preempts the CPUC rule that emergency service organizations and subscribers with nonpublished numbers who fail to communicate their choice between per call blocking and per line blocking be served with a system that blocks disclosure on all calls. AT&T and CompTel filed separate petitions, seeking review of the denial of their petitions for reconsideration of the FCC's decision requiring telephone carriers using SS7 to deliver CPN without charge to other telephone carriers (the free passage rule).

[1] The fact that the FCC narrowed its preemption in the Second R&O did not prevent it from preempting CPUC's blocking default plan. [2] The FCC's explanation that the CPUC's per line blocking default rule would impede development of CPN-based services was rational. [3] Although the Communications Act of 1934 separates the regulation of interstate and intrastate telecommunications and denies to the FCC any authority over intrastate communications, [4] a

Supreme Court decision recognized an "impossibility" exception to the limitation on the FCC's authority. [5] The FCC set forth its justification for preempting the CPUC's per line blocking default for intrastate calls in the Second R&O. [6] The FCC's preemption order met the requirement that a preemption rule should be narrowly tailored to fit federal policies. The FCC preemption regulation was not arbitrary and capricious, and preemption of CPUC's default fit within the "impossibility exception."

[7] In regard to CPUC's federal constitutional challenges to the FCC's Caller ID rule, a phone number is not among the select privacy interests protected by a federal constitutional right to privacy. [8] The preemption rule did not violate any cognizable privacy interest. [9] In addition, exposure of a telephone number does not violate the First Amendment right not to speak, [10] and the FCC's preemption order did not violate the First Amendment right to speak anonymously.

[11] The FCC's free passage rule was not arbitrary and capricious. [12] And, because the FCC did not impermissibly engage in rate making without following the required procedures, AT&T and CompTel's argument that the FCC violated Communications Act § 205 was rejected.

COUNSEL

Mark Fogelman, Public Utilities Commission of the State of California, San Francisco, California; David W. Carpenter, Sidley & Austin, Chicago, Illinois; Robert J. Aarnoth, Reed Smith Shaw & McClay, Washington, D.C. (on the briefs), for the petitioners.

John P. Stern, Federal Communications Commission, Washington, D.C., for the respondents.

Thomas J. Long, Toward Utility Rate Normalization, San Francisco, California; Gus T. May, Hall & Associates, Los Angeles, California; Roberta M. Ikemi, California Women's Law Center, Los Angeles, California; William Gwire, San Francisco, California; James Bradford Ramsay, National Association of Regulatory Utility Commissioners, Washington, D.C.; Carolyn L. Polowy, National Association of Social Workers, Washington, D.C.; Maureen A. Scott, Pennsylvania Public Utility Commission, Harrisburg, Pennsylvania, (on the briefs), for the petitioners-intervenors.

John Gibson Mullan, Kirkland & Ellis, Washington, D.C.; Michael R. Doyen (on the briefs), Munger, Tolles & Olson, Los Angeles, California, for the respondents-intervenors.

OPINION

ALARCON, Circuit Judge:

California's Public Utilities Commission ("CPUC") has filed two petitions seeking review of the Federal Communications Commission's ("FCC") decision denying reconsideration of the FCC's rule that subscribers who fail to choose the method to prevent disclosure of their nonpublished¹ telephone numbers, when Caller ID service becomes effective, must be served with a system that requires the customer to dial *67 each time a call is made ("per call blocking") to protect his or her privacy. CPUC argues that this rule violates federal constitutional rights, and arbitrarily and capriciously preempts the CPUC rule that emergency service organizations and subscribers with nonpublished numbers, who fail to communicate their choice ("default")² between per call blocking and a sys-

¹Nonpublished refers to both unlisted telephone numbers (which are available from directory assistance) and unpublished telephone numbers (which are both unlisted and not available from directory assistance).

²Default is a term of art used by the parties in this case to refer to the assignment of a blocking system to a subscriber who does not respond to a request that a choice be made between per line blocking and per call blocking.

tem that blocks disclosure on all calls unless the calling party dials *82 ("per line blocking"), be served with a system that blocks disclosure on all calls.

AT&T Corporation ("AT&T") and Competitive Telecommunications Association ("CompTel") have filed separate petitions in which they seek review of the denial of their petitions for reconsideration of the FCC's decision requiring telephone carriers using Common Channel Signalling System 7 ("SS7")³ to deliver calling party numbers ("CPN") without charge (the "free passage" rule) to other telephone carriers.

AT&T and CompTel filed their petitions in the District of Columbia Circuit. The petitions for review filed by CPUC, AT&T, and CompTel were consolidated by the Judicial Panel on Multidistrict Litigation.⁴

³Common Channel Signalling System 7 refers to a technological advancement in the method that telephone calls are set up (i.e., how a connection is established). Prior to the development of SS7 signalling systems, calls were set up over the communications channels that also carried the conversations once connections were completed. This is referred to as "in-band signalling," in that the call set up and related signalling were performed in the same frequency bands as the ultimate calls and were an expensive prelude to those calls. The SS7 system permits "out of band" signalling to occur, i.e., it allows calls to be set up over a separate set of systems and switches that do not tie up communications channels. SS7 permits telephone companies to carry and transmit CPN, and to offer a host of other new services that include: pay-per-view television, order entry verification, voice message storage, secure computer access, customized customer service, business fraud reduction, call routing, and emergency dispatch.

⁴Pacific Bell and GTE California have intervened and submitted a brief in support of the FCC responding to CPUC's petition. Toward Utility Rate Normalization ("TURN"), Consumer Action ("CA"), Consumer Federation of America ("CFA"), Southern California Coalition on Battered Women ("SCCBW"), the National Association of Regulatory Utility Commissioners ("NARUC"), the National Association of Social Workers ("NASW"), Pennsylvania Public Utility Commission ("PPUC"), and California Alliance Against Domestic Violence & the Family Violence Pre-

We conclude that the FCC did not act arbitrarily and capriciously in ruling (1) that the preemption of the CPUC's rule was necessary to prevent negation of a valid FCC regulatory goal, and (2) that the imposition of the per call blocking option on subscribers with nonpublished numbers and emergency service organizations, who do not make a choice between Caller ID blocking systems, does not violate any federal constitutional right. We uphold the FCC's free passage rule because the record shows that the FCC examined the relevant evidence and adequately explained all aspects of its decision.

We have divided the opinion into two parts. In Part One, we review CPUC's challenge to the FCC's preemption of the type of Caller ID blocking service that must be offered to emergency service organizations and subscribers with non-published telephone numbers who do not make an election. In Part Two, we consider the claims of AT&T and CompTel that the free passage rule violates the requirements of the Administrative Procedures Act ("APA"), and is arbitrary and capricious. To set the stage for our discussion of these discrete questions, we will summarize the historical facts and procedural steps that preceded this current legal contest.

The provision of telephone services is divided between local exchange carriers ("LECs") and long distance carriers ("IXCs"). LECs generally provide all telephone services within their authorized local calling areas, and the vast majority of intrastate toll calls. The local carriers also provide

vention Fund ("CAADC") have intervened and submitted a joint brief in support of CPUC. Ameritech Operating Companies, Bell Atlantic Telephone Companies, BellSouth Telecommunications, Inc., GTE Service Corporation, National Telephone Cooperative Association, Southwestern Bell Telephone Company, United States Telephone Association, and U S West Communications, Inc. (collectively "Network Intervenor") have intervened and submitted a brief in support of the FCC and in response to AT&T's and CompTel's petition.