

largest business customers would be able to enjoy the one-stop-shopping benefits of the integrated marketing of basic and enhanced services" because "[a]pplying a prior authorization rule for other than the largest customers likely would require a BOC to establish separate enhanced and basic service marketing forces for those customers. If a customer has restricted CPNI, whether through action or inaction, then for basic services that customer must deal with "network-services-only" personnel, i.e., those with no involvement with enhanced service marketing or sales, because only those personnel are permitted under the Commission's (FCC's) CPNI rule to have access to restricted CPNI." GTE-SW argued in comments that the proposed rule would require separate marketing channels for supplemental services in direct conflict with FCC orders. They further argued that the "increase in cost and the administrative burden created would make the provision of these services unattractive to GTE-SW and other LECs. LECs operating only in Texas may not choose to offer the service at all, while LECs with multi-state operations may shift investments to other states which encourage the introduction of new services." SWBT stated that the rule would "effectively eliminate the residence and business product promotion centers, the direct marketing center, and service centers (business offices) as viable sales channels and/or sales agents for 'supplemental services' in the state of Texas." SWBT also stated that multi-line business customers would get two ballots under the rule - the FCC's and the state's.

The commission concurs with the FCC's federal policy goal of pursuing an "economically efficient and technologically advanced telecommunications infrastructure." However, the LECs' assertion that the FCC preempted this commission's prior authorization rule is misleading. The FCC preempted prior authorization requirements where such prior authorization was necessary before the

BOCs could release information to its own personnel marketing enhanced services. The FCC correctly concluded that such prior authorization would be practically impossible without separate marketing personnel for basic and enhanced services since the LEC would already have effectively released the information to all personnel by virtue of its daily basic service operations. The intent of Texas's proposed rule was to restrict LEC release of customer-specific CPNI to third parties, but also to restrict the use of such information by LEC personnel marketing supplemental services. Accordingly, the rule has been revised to clarify that the use of such information by LEC personnel is restricted. The rule has been further amended to provide exceptions to the prior authorization requirements should a residential customer contact the LEC and request information about supplemental services, thereby encouraging "one-stop-shopping benefits" at the customer's request. The rule does not expressly or effectively require any separate marketing centers or personnel in order for the LEC to market supplemental services, but rather restricts the LEC's use of customer-specific CPNI to do such marketing. The LEC can offer information on supplemental services to any subscriber, at any time, using any marketing method, and any LEC personnel provided they do not use customer-specific CPNI to do so without prior authorization. What the rule expressly prohibits is for the LEC to use customer-specific CPNI for direct and focused marketing campaigns against residential customers, targeted for such marketing by virtue of their CPNI characteristics, without such customers' consent. Therefore, the commission is not in conflict with the FCC's federal policy objectives. Rather, this approach to prior authorization, in fact, encourages the development of an "economically efficient" infrastructure by allowing the LECs to market supplemental services to all residential customers using existing sales channels; and promotes a "technologically advanced telecommunications infrastructure" by fostering competition through a fair exchange of authorized customer information among all providers of

telecommunications services and products. Further, as the rule applies only to residential customers, the balloting requirements will not conflict or cause duplication with FCC balloting requirements.

TATAS and the Texas Gray Panthers did not want the LECs to be able to market supplemental services at the time a customer contacts the LEC to establish new services. The Texas Gray Panthers asserted that a customer is most vulnerable to sales pitches at the time he is establishing service, and that "such one-time shot is unfair to other telecommunications vendors." GTE-SW contended that a customer expects to get full service from his local exchange carrier and should be allowed to receive such information from the LEC at any time. The proposed rule would have required the new customer to complete an authorization ballot prior to being told about supplemental services, however, the commission finds that a customer should be afforded the opportunity to obtain information about supplemental services at the time he initiates service, but that the LEC should be required to inform the customer that such services may be available from a vendor other than the LEC. The rule has been amended generally as outlined above to restrict the LECs use of CPNI, but has also been revised to provide for such specific situations as new customer service.

GTE-SW, SWBT, and TTA commented on the definition of customer-specific CPNI as being too restrictive in including a customer's name, address, and telephone number. Such information is readily available on published customers in the telephone directory and should, therefore, not be considered proprietary. The commission agrees that such information cannot be considered proprietary for those customer's that do not have unlisted or unpublished directory information. The definition was intended to distinguish customer-specific CPNI from aggregate CPNI by the inclusion of

information that identified the specific customer with specific network information. The definition has been revised to clarify that CPNI is customer-specific when the customer's name, address or telephone number is matched up with such customer's network information.

SWBT argued that the provision in the rule requiring the LEC to provide names, addresses, and telephone numbers to any party requesting such information was contrary to the rule's purported goal of protecting the privacy rights of the customer. The commission finds that, to the extent such information is not unlisted or unpublished, the LEC must be required to provide such information upon request in order to assure equitable distribution of accurate information to all parties.

AT&T and Sprint commented that IXCs should have a separate line on the ballot for customers to authorize release of information as some customers may not realize that certain information would be restricted from their own presubscribed IXC. The rule has been revised to allow for a separate line on the ballot for customers to specifically authorize such release.

GTE-SW and SWBT commented on the manner in which customer-specific or aggregate CPNI may be provided upon authorization may result in the LEC having to provide their competitors with the results of the LEC's proprietary marketing data runs. AT&T suggested that third parties may want to get the information in a different form than as compiled by the LEC. The rule has been revised to alleviate both of these concerns.

GTE-SW commented that the provision in the proposed rule addressing directory listings had nothing to do with customer privacy and that the effect would be to diminish contribution levels. The provision was in the proposed rule to except directory listings from the CPNI restrictions. Since the CPNI definition has been revised to clarify when customer names, addresses and telephone numbers are included, this provision is no longer necessary and has, therefore been removed.

TAASA and Crime Stoppers' comments were directed at caller ID services and were not relevant to the proposed rule.

DHS was concerned that the rule does not address the release of the names of callers to 800 numbers by 800 customers who receive such information on their telephone bills for 800 service. The commission has no jurisdiction to prohibit a customer from releasing information received on a telephone bill.

The new section is adopted under Texas Civil Statutes, Article 1446c, §16, which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§23.57 Telecommunications Privacy.

- (a) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:
- (1) **Automatic Number Identification (ANI)** - the automatic transmission by the local switching system of the originating billing telephone number to an interexchange carrier or other communications carrier in the normal course of telephone operations.
 - (2) **Aggregate CPNI** - a configuration of CPNI that has been collected by a local exchange carrier and organized such that none of the information will identify an individual customer.
 - (3) **Customer Proprietary Network Information (CPNI), Customer-specific** - any information compiled on a customer by a local exchange carrier in the normal course of providing telephone service that identifies any individual customer by matching such information with the customer's name, address, or calling or originating billing telephone number. This information includes, but is not limited to, line type(s), technical characteristics (for example; rotary service), class of service, current telephone charges, long distance billing record, local service billing record, directory assistance charges, usage data, and calling patterns.
 - (4) **Privacy Issue** - an issue that arises when a telecommunications utility proposes to offer a new telecommunications service or

feature that would result in a change in the outflow of information about a customer where such customer has been offered no means of control over the change.

(5) **Supplemental Services** - telecommunications features or services offered by a local exchange carrier for which analogous services or products may be available to the customer from a source other than a local exchange carrier.

(b) **Privacy Considerations.** Local exchange service customers should be permitted to control the outflow of information about themselves. Any local exchange carrier proposing to offer a new service or a new feature to an existing service under the provisions of §23.24 of this title (relating to Form and Filing of Tariffs), or §23.26 of this title (relating to New and Experimental Services) for which the Commission finds a relevant privacy issue, as that term is defined in subsection (a)(4) of this section, and for which the local exchange carrier has not shown good cause pursuant to subsection (c)(4) of this section, must, in a manner ordered by the commission,:

- (1) provide a means of restoring the lost degree of privacy at no charge to the public;
- (2) educate the public as to the means by which the lost degree of privacy can be restored.

(c) **New Services or Features.** Staff shall review all applications submitted by a local exchange carrier under the provisions of §23.24 of this title (relating to Form and Filing of Tariffs), or §23.26 of this title (relating

to New and Experimental Services) for privacy issues. The application must identify all circumstances under which a customer of the local exchange carrier may experience a lost degree of privacy as a result of the implementation of the new service or feature proposed in the application, including, but not limited to, whether a customer's name, address, or telephone number will be provided to a called party or to any other third party, and for each such circumstance identified:

- (1) state whether the lost degree of privacy can be restored by the affected customers and how such customers can restore it;
- (2) state, if applicable, whether the local exchange carrier will charge the affected customers for restoring the lost degree of privacy, what that charge will be, and how the public interest will be served by the charge;
- (3) state how the local exchange carrier will educate the affected customers as to the implications for privacy and, if applicable, the means by which such customers can restore the lost degree of privacy; and,
- (4) show good cause, if applicable, for not offering the affected customers a means by which the lost degree of privacy can be restored.

- (d) **Automatic Number Identification.** The local exchange carriers shall print in the white pages of their telephone directories, and send as a billing insert annually to all of their customers, the statement: "When an 800 or 900 number is dialed from your telephone, your telephone number may be transmitted to the company you have called and may be

available to that company's service representative before your call is answered." The statement must appear in all telephone directories published for the local exchange carrier subsequent to the effective date of this section. The statement must appear as a billing insert for each local exchange carrier within 60 days of the effective date of this section and annually thereafter.

(e) Customer Proprietary Network Information (Customer-specific).

Unless otherwise provided by this section, a local exchange carrier must ensure that all customer-specific CPNI that has been authorized for release by the customer to a third party is offered to such third parties, under the same terms, conditions and prices as such similar data is made available for use to all other businesses affiliated with the local exchange carrier and local exchange carrier personnel marketing supplemental services, provided that the third party must specify the type and scope of the customer-specific CPNI requested. A local exchange carrier must, upon request, provide such customer-specific CPNI to a third party under any other just or alternative terms, conditions or prices that are just and reasonable under the circumstances and that are not unreasonably preferential, prejudicial or discriminatory.

(1) Except as provided in paragraph (5) of this subsection, local exchange carrier personnel may not use customer-specific CPNI to market supplemental services to residential customers without written authorization from such residential customers as set out in paragraph (3) of this subsection.

- (2) A local exchange carrier may not release customer-specific CPNI to any third party, including, but not limited to, providers of supplemental services and any businesses affiliated with the local exchange carrier without written authorization from such customers as set out in paragraph (3) of this subsection.
- (3) A ballot requesting customer authorization for the use or release of customer-specific CPNI shall be sent to all residential customers of the local exchange carrier at least one time. The ballot shall be reviewed by the staff of the Telephone Utility Analysis Division before it is sent to the customer. The staff shall notify the general counsel of any concerns it may have with the proposed ballot, and the general counsel shall notify the local exchange carrier within 10 days of submission if the proposed ballot may not be distributed. The ballot must be distributed to all residential customers of the local exchange carrier within 180 days of the effective date of this section.

 - (A) The ballot must describe specifically what information is to be released to third parties or used by local exchange carrier personnel to market supplemental services if authorization is granted.
 - (B) If the authorization is to be requested for categories of information, the specific information contained in each category must be listed and the ballot must allow the customer to authorize each category of information separately.

- (C) The ballot must allow the customer the option of listing only specific third parties for the local exchange carrier to release information to.
 - (D) The ballot must allow the customer the option of releasing information to the interexchange carrier to which the customer has presubscribed.
 - (E) The ballot must allow the customer the option of releasing information to any other interexchange carrier.
 - (F) The ballot may allow the customer the choice of releasing the information to any businesses affiliated with the local exchange carrier or to be used by local exchange carrier personnel marketing supplemental services only.
 - (G) The ballot may allow the customer the choice of releasing the information to any party.
 - (H) The ballot must state that there will be no charge to the customer for restricting or releasing any of the information listed on the ballot.
- (4) A local exchange carrier may provide customer-specific CPNI to third parties without obtaining prior written authorization from the residential customer as provided in subparagraphs (A)-(D) of this subsection.
- (A) A local exchange carrier may provide ANI to a provider of emergency services.
 - (B) A local exchange carrier must, where it has the technical capability, provide ANI to interexchange carriers or to other common carrier access customers.

- (C) A local exchange carrier must provide ANI if otherwise required by law.
 - (D) The local exchange carrier must provide names, addresses and telephone numbers of customers, other than those customers that have requested that such information be unlisted or unpublished for the purpose of directory publication, to any entity requesting such information.
- (5) Local exchange carrier personnel may use customer-specific CPNI to market supplemental services to residential customers without obtaining prior written authorization from such customers as set out in subparagraphs (A) and (B) of this paragraph.
- (A) If a new residential customer contacts a local exchange carrier to initiate local exchange service and such customer inquires about supplemental services, the local exchange carrier personnel must inform the new residential customer, prior to marketing the local exchange carrier's supplemental services to that customer, that similar services or products may be available to the customer from a vendor other than the local exchange carrier.
 - (B) If a residential customer contacts the local exchange carrier to inquire about supplemental services offered by the local exchange carrier and such residential customer has not authorized the local exchange carrier personnel to use his customer-specific CPNI to market supplemental services, the local exchange carrier personnel must ask the

customer for verbal authorization to use such CPNI at that time. Such verbal authorization must be received each time such residential customer contacts the local exchange carrier to inquire about supplemental services.

- (f) **Aggregate CPNI.** If a local exchange carrier compiles and uses aggregate CPNI for marketing purposes or provides aggregate CPNI to any business associated with the local exchange carrier for marketing purposes, it must also provide aggregate CPNI to any third party upon request. A local exchange carrier must offer to provide aggregate CPNI under the same terms and conditions and at the same price as it is made available to all businesses affiliated with the local exchange carrier and to local exchange carrier personnel marketing supplemental services, provided that the third party must specify the type and scope of the aggregate CPNI requested. A local exchange carrier must, upon request, provide such aggregate CPNI to a third party under any other just or alternative terms, conditions or prices that are just and reasonable under the circumstances and that are not unreasonably preferential, prejudicial or discriminatory.

This agency hereby certifies that the section as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on _____

Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

This agency hereby certifies that the section as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on

**Marta Greytok
Commissioner**

**Paul D. Meek
Commissioner**

**Robert W. Gee
Chairman**

ATTEST:

**Mary Ross McDonald
Secretary
Public Utility Commission of Texas**

~~{23.57}~~23.57 Telecommunications Privacy.

~~(a) Privacy Considerations--Customers should be permitted to control the outflow of information about themselves--Any local exchange carrier proposing to offer a new service or a new feature to an existing service that will compromise current privacy expectations must offer a means of restoring the lost degree of privacy, unless it can show good cause for not doing so.~~

~~{b}~~ Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) **Automatic Number Identification (ANI)** - the automatic transmission by the local switching system of the originating billing telephone number to an interexchange carrier or other communications carrier in the normal course of telephone operations.

(2) **Aggregate CPNI** - a configuration of CPNI that has been collected by a local exchange carrier and organized such that none of the information will identify an individual customer.

(3) **Customer Proprietary Network Information (CPNI), Customer-specific** - any information compiled on a customer by a local exchange carrier in the normal course of providing telephone service that identifies any individual customer by matching such information with the customer's name, address, or calling or originating billing telephone number. This information includes, but is not limited to, ~~the customer's name, address, telephone number(s), originating billing telephone number transmitted as the ANI,~~ line type(s), technical characteristics (for example; rotary service), class of service, current telephone charges, long distance billing record, local service billing record, directory assistance charges, usage data, and calling patterns.

(4) **Privacy Issue** - an issue that arises when a telecommunications utility proposes to offer a new telecommunications service or feature that would result in a change in the outflow of information about a customer where such customer has been offered no means of control over the change.

(5) **Supplemental Services** - telecommunications features or services that are not required for basic telephone service that are offered by multiple vendors, and may be offered by a local exchange carrier for which analogous services or products may be available to the customer from a source other than a local exchange carrier.

~~(5) Optional Calling Features or Plans--tariffed telecommunications features or plans offered by a~~(b) Privacy Considerations. Local exchange service customers should be permitted to control the outflow of information about themselves. Any local exchange carrier that are not required for basic telephone proposing to offer a new service or a new feature to an existing service and that are not offered by multiple vendors under the provisions of §23.24 of this title (relating to Form and Filing of Tariffs), or §23.26 of this title (relating to New and Experimental Services) for which the Commission finds a relevant privacy issue, as that term is defined in subsection (a)(4) of this section, and for which the

local exchange carrier has not shown good cause pursuant to subsection (c)(4) of this section, must, in a manner ordered by the commission;

(1) provide a means of restoring the lost degree of privacy at no charge to the public;

(2) educate the public as to the means by which the lost degree of privacy can be restored.

(c) **New Services or Features.** Privacy shall be addressed explicitly in each application filed staff shall review all applications submitted by a local exchange carrier under the provisions of ~~†23-24§23.24~~ of this title (relating to Form and Filing of Tariffs), or ~~†23-26§23.26~~ of this title (relating to New and Experimental Services) for approval of new services or new features. Each privacy issues. The application must shall:

(1) identify all circumstances under which a customer of the local exchange carrier may experience a lost degree of privacy issues relevant to as a result of the implementation of the new service or feature proposed in the application, including, but not limited to, whether a customer's name, address, or telephone number will be provided to a called party or to any other third party, and for each such circumstance identified;

(2) state how the public can restore any (1) state whether the lost degree of privacy that would be experienced as a result of the new service or feature proposed in the application; can be restored by the affected customers and how such customers can restore it;

(3) state if there will be any charge to customers of (2) state, if applicable, whether the local exchange carrier will charge the affected customers for restoring any the lost degree of privacy experienced as a result of the new service or feature proposed in the application, and address, what that charge will be, and how the public interest is will be served by the charge;

(4)(3) state how the local exchange carrier will educate the public affected customers as to the implications for privacy and, if applicable, the means by which the public such customers can restore any the lost degree of privacy experienced as a result of the service or feature proposed in the application; and,

(5) state whether the service will allow for the calling party's telephone number to be delivered to the called party or to any third party (4) show good cause, if applicable, for not offering the affected customers a means by which the lost degree of privacy can be restored.

(d) **Automatic Number Identification.** The local exchange carriers shall print in the white pages of their telephone directories, and send as a billing insert annually to all of their customers, the statement: "When an 800 or 900 number is dialed from your telephone, your telephone number may be transmitted to the company you have called and may be available to that company's service representative before your call is answered." The statement must appear in all telephone directories

published for the local exchange carrier subsequent to the effective date of this section. The statement must appear as a billing insert for each local exchange carrier within 60 days of the effective date of this section and annually thereafter.

(e) **Customer Proprietary Network Information (Customer-specific).** Unless otherwise provided by this section, a local exchange carrier must ensure that all customer-specific CPNI that has been authorized for release by the customer to a third party is provided offered to such third parties, under the same terms and conditions and at the same price as it prices as such similar data is made available for use to all other businesses affiliated with the local exchange carrier and local exchange carrier personnel marketing supplemental services, provided that the third party must specify the type and scope of the

(4) Before releasing customer-specific CPNI requested. A local exchange carrier must, upon request, provide such customer-specific CPNI to a third party under any other just or alternative terms, conditions or prices that are just and reasonable under the circumstances and that are not unreasonably preferential, prejudicial or discriminatory.

(1) Except as provided in paragraph (5) of this subsection, local exchange carrier personnel may not use customer-specific CPNI to market supplemental services to residential customers without written authorization from such residential customers as set out in paragraph (3) of this subsection.

(2) A local exchange carrier may not release customer-specific CPNI to any third party, including, but not limited to, providers of supplemental services; and any businesses affiliated with the local exchange carrier, and local exchange carrier personnel marketing supplemental services, but not including local exchange carrier personnel marketing optional calling features or plans, a without written authorization from such customers as set out in paragraph (3) of this subsection.

(3) A ballot requesting customer authorization for the use or release of customer-specific CPNI shall be sent to all residential customers of the local exchange carrier must obtain written authorization by balloting each residential and business customer at least one time. The ballot shall be reviewed by the staff of the Telephone Utility Analysis Division before it is sent to customers the customer. The staff shall notify the general counsel of any concerns it may have with the proposed ballot, and the general counsel shall notify the local exchange carrier within 10 days of submission if the proposed ballot may not be distributed. The ballot must be distributed to all residential customers of the local exchange carrier within 180 days of the effective date of this section.

(A) The ballot must describe specifically what information is to be released to third parties or used by local exchange carrier personnel to market supplemental services if authorization is granted.

(B) If the authorization is to be requested for categories of information, the specific information contained in each category must be listed and the ballot must allow the customer to authorize each category of information separately.

(C) The ballot must allow the customer the option of listing only specific third parties for the local exchange carrier to release information to.

(D) The ballot may must allow the customer the option of releasing information to the interexchange carrier to which the customer has presubscribed.

~~(E) The ballot must allow the customer the option of releasing information to any other interexchange carrier.~~

~~(F) The ballot may allow the customer the choice of releasing the information to any businesses affiliated with the local exchange carrier and or to the be used by local exchange carrier's carrier personnel marketing supplemental services marketing personnel only.~~

~~(E)(G) The ballot may allow the customer the choice of releasing the information to any party.~~

~~(F)(H) The ballot must state that there will be no charge to the customer for restricting or releasing any of the information listed on the ballot.~~

~~(2) A local exchange carrier may use customer-specific CPNI to market optional calling features of plans to customers at the time the customer is requesting new business or residential service. However, at any other time, and before releasing customer-specific CPNI to local exchange carrier personnel marketing optional calling features or plans to any other customers, the local exchange carrier must send each customer a separate mailing, other than a billing statement, which states that the customer may choose to limit the amount of mail and promotional calls received from local exchange carrier personnel marketing optional calling features and plans, and how the customer may inform the local exchange carrier of that choice. The mailing shall be reviewed by the staff of the Telephone Utility Analysis Division before it is sent to customers. The staff shall notify the general counsel of any concerns it may have with the proposed mailing, and the general counsel shall notify the local exchange carrier within 10 days of submission if the proposed mailing may not be distributed.~~

~~(3)(4) A local exchange carrier may provide customer-specific CPNI to third parties without obtaining prior written authorization from the residential customer as provided in subparagraphs (A)-(E)(D) of this subsection.~~

(A) A local exchange carrier may provide ANI to a provider of emergency services.

(B) A local exchange carrier may must, where it has the technical capability, provide ANI to interexchange carriers or to other common carrier access customers.

(C) A local exchange carrier may must provide ANI if otherwise required by law.

(D) A The local exchange carrier must provide names, addresses and telephone numbers of customers, other than those customers that have requested that such information be unlisted, to any entity requesting such information for the purpose of telephone directory publication. The local exchange carrier must offer to provide this information in the same format, and under the same terms and conditions as it is provided to the party that publishes the directory for the local exchange carrier.
~~(E) The local exchange carrier must provide names, addresses and telephone numbers of customers, other than those customers that have requested that such information be unlisted or unpublished for the purpose of directory publication, to any entity requesting such information.~~

(5) Local exchange carrier personnel may use customer-specific CPNI to market supplemental services to residential customers without obtaining prior written authorization from such customers as set out in subparagraphs (A) and (B) of this paragraph.

(A) If a new residential customer contacts a local exchange carrier to initiate local exchange service and such customer inquires about supplemental services, the local exchange carrier personnel must inform the new residential customer, prior to marketing the local exchange carrier's supplemental services to that customer, that similar services or products may be available to the customer from a vendor other than the local exchange carrier.

(B) If a residential customer contacts the local exchange carrier to inquire about supplemental services offered by the local exchange carrier and such residential customer has not authorized the local exchange carrier personnel to use his customer-specific CPNI to market supplemental services, the local exchange carrier personnel must ask the customer for verbal authorization to use such CPNI at that time. Such verbal authorization must be received each time such residential customer contacts the local exchange carrier to inquire about supplemental services.

(f) Aggregate CPNI. If a local exchange carrier compiles and uses aggregate CPNI for marketing purposes or provides aggregate CPNI to any business associated with the local exchange carrier for marketing purposes, it must also provide aggregate CPNI to any third party upon request. A local exchange carrier must offer to provide aggregate CPNI under the same terms and conditions and at the same price as it is made available to all businesses affiliated with the local exchange carrier and to local exchange carrier personnel marketing supplemental services, provided that the third party must specify the type and scope of the aggregate CPNI requested. A local exchange carrier must, upon request, provide such aggregate CPNI to a third party under any other just or alternative terms, conditions or prices that are just and reasonable under the circumstances and that are not unreasonably preferential, prejudicial or discriminatory.

This agency hereby certifies that the ~~proposal~~ section as adopted has been reviewed by legal counsel and found to be within a valid exercise of the agency's legal authority to adopt.

Issued in Austin, Texas on _____

Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

This agency hereby certifies that the section as adopted has
been reviewed by legal counsel and found to be a valid
exercise of the agency's legal authority.

Issued in Austin, Texas, on April 1, 1992.

Marta Greytok
Commissioner

Paul D. Meek
Commissioner

Robert W. Gee
Chairman

ATTEST:

Mary Ross McDonald
Secretary
Public Utility Commission of Texas

§23.57 Telecommunications Privacy

- (a) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:
- (1) **Automatic Number Identification (ANI)** — the automatic transmission by the local switching system of the originating billing telephone number to an interexchange carrier or other communications carrier in the normal course of telephone operations.
 - (2) **Aggregate CPNI** — a configuration of CPNI that has been collected by a telecommunications utility and organized such that none of the information will identify an individual customer.
 - (3) **Customer Proprietary Network Information (CPNI), Customer-specific** — Any information compiled on a customer by a telecommunications utility in the normal course of providing telephone service that identifies any individual customer by matching such information with the customer's name, address, or calling or originating billing telephone number. This information includes, but is not limited to, line type(s), technical characteristics (e.g., rotary service), class of service, current telephone charges, long distance billing record, local service billing record, directory assistance charges, usage data, and calling patterns.
 - (4) **Privacy Issue** — an issue that arises when a telecommunications provider proposes to offer a new telecommunications service or feature that would result in a change in the outflow of information about a customer. The term privacy issue is to be construed broadly. It includes, but is not limited to, changes in the following:
 - (A) the type of information about a customer that is released;
 - (B) the customers about whom information is released;
 - (C) the entity or entities to whom the information about a customer is released;
 - (D) the technology used to convey the information;
 - (E) the time at which the information is conveyed; and
 - (F) any other change in the collection, use, storage, or release of information.
 - (5) **Supplemental Services** — telecommunications features or services offered by a dominant certificated telecommunications utility for which analogous services or product may be available to the customer from a source other than a dominant certificated telecommunications utility. Supplemental services shall not be construed to include optional extended area calling plans that a dominant certificated telecommunications utility may offer pursuant to §23.49 of this title (relating to Telephone Extended Area Service), or pursuant to a final order of the commission in a proceeding pursuant to §§3.210, 3.211, or 3.213 of the Public Utility Regulatory Act of 1995.
- (b) **Privacy Considerations.** Customers of dominant certificated telecommunications utility service should be permitted to control the outflow of information about themselves. Any dominant certificated telecommunications utility proposing to offer a new service or a new feature to an existing service under the provisions of §23.24 of this title (relating to Form and Filing of Tariffs), §23.26 of this title (relating to New and Experimental Services), §23.27 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges), or §23.28 of this title (relating to Promotional Rates for Dominant Certificated Telecommunications Utility Services) for which the commission finds a lost degree of privacy, and for which the dominant certificated telecommunications utility has not shown good cause pursuant to subsections (c)(2)(B)(ii) and (c)(2)(D) of this section, must, in a manner ordered by the commission:
- (1) provide a means of restoring the lost degree of privacy at no charge to the public; and
 - (2) educate the public as to the means by which the lost degree of privacy can be restored.
- (c) **New Services or Features.** For all dominant certificated telecommunications utility applications filed pursuant to §23.24 of this title, §23.26 of this title, §23.27 of this title, or §23.28 of this title, the dominant certificated telecommunications utility must identify all privacy issues, as that term is defined in subsection (a)(4) of this section, that result from the implementation of the new service or feature, and all privacy issues that result in a lost degree of privacy.

- (1) **Identification of privacy issues.** The dominant certificated telecommunications utility shall identify all privacy issues that result from the implementation of the new service or feature. Identification of privacy issues shall include, but not be limited to:
 - (A) identification and description of the type of information that is released as a result of the new service or feature;
 - (B) identification of the category of customers about whom information will be released;
 - (C) identification of the category of entities to whom information about a customer will be released;
 - (D) identification and description of the change in the technology used to convey the information;
 - (E) identification and description of the change in the time at which the information is conveyed; and
 - (F) identification and description of any other change in the collection, use, storage, or release of information.
 - (2) **Lost degree of privacy.** For each privacy issue identified pursuant to paragraph (1) of this subsection, the dominant certificated telecommunications utility shall identify all circumstances under which a customer of the dominant certificated telecommunications utility may experience a lost degree of privacy as a result of the implementation of the new service or feature proposed in the application, including, but not limited to, whether a customer's name, address, or telephone number will be provided to a called party or to any other third party, and for each such circumstance identified:
 - (A) state whether the lost degree of privacy can be restored by the affected customers and how such customers can restore it;
 - (B) state whether the dominant certificated telecommunications utility will charge the affected customers for restoring the lost degree of privacy and, if applicable:
 - (i) what such charge will be; and
 - (ii) show good cause for such charge;
 - (C) state how the dominant certificated telecommunications utility will educate the affected customers as to the implications for privacy and, if applicable, the means by which such customers can restore the lost degree of privacy; and
 - (D) show good cause, if applicable, for not offering the affected customers a means by which the lost degree of privacy can be restored.
 - (3) **Staff Review.** Staff shall review all applications submitted by a dominant carrier under the provisions of §23.24 of this title, §23.26 of this title, §23.27 of this title, or §23.28 of this title for privacy issues and privacy issues resulting in a lost degree of privacy.
- (d) **Notice of Number Delivery Over 800 and 900 Services.** The dominant certificated telecommunications utilities shall print in the white pages of their telephone directories, and send as a billing insert annually to all of their customers, the statement: "When an 800 or 900 number is dialed from your telephone, your telephone number may be transmitted to the company you have called and may be available to that company's service representative before your call is answered." The statement must appear in all telephone directories published for the dominant certificated telecommunications utility subsequent to the effective date of this section. The statement must appear as a billing insert for each dominant certificated telecommunications utility within 60 days of the effective date of this section and annually thereafter.
- (e) **Customer Proprietary Network Information (Customer-specific).** Except as provided in paragraph (3) of this subsection, telecommunications utility personnel may not use customer-specific CPNI to market supplemental services to a residential customer if restriction is requested by such residential customer.
- (1) **Annually, each telecommunications utility shall notify each residential customer of his or her customer-specific CPNI rights.**
 - (A) **Distribution and timing of distribution of the notification.**
 - (i) Each telecommunications utility shall print such notification in the white pages of its telephone directories.

- (ii) Each telecommunications utility shall send such notification as a billing insert to each of its residential customers annually.
- (B) Contents of the notification.
 - (i) The notification shall provide the customer with an explanation of customer-specific CPNI.
 - (ii) The notification shall describe the customer's right to restrict the telecommunications utility's use of his or her customer-specific CPNI.
 - (iii) The notification shall state with specificity the manner in which the customer may restrict the telecommunications utility's use of his or her customer-specific CPNI.
 - (iv) The notification shall explain that restricting the telecommunications utility's use of customer-specific CPNI may not eliminate all marketing contacts from the telecommunications utility.
 - (v) The notification shall state that there will be no charge to the customer for electing to restrict the use of his or her customer-specific CPNI.
 - (vi) The notification must state the limited circumstances described in paragraph (3) of this subsection, under which the telecommunications utility personnel may use customer-specific CPNI to market supplemental services even if the customer requests restriction of the use of the customer-specific CPNI.
- (C) Staff review of the notification. The notification shall be reviewed by the staff of the Regulatory Division before it is distributed. The staff of the Regulatory Division shall notify the telecommunications utility within ten days of submission whether the proposed notification may be distributed or must be modified and distributed.
- (2) The telecommunications utility may not charge the customer for electing to restrict the use of his or her customer-specific CPNI.
- (3) Even if a residential customer requests restriction of the use of his or her customer-specific CPNI, telecommunications utility personnel may use customer-specific CPNI to market supplemental services to that customer if such customer contacts the telecommunications utility to inquire about supplemental services offered by the telecommunications utility.
- (f) **Aggregate CPNI.** If a telecommunications utility compiles and uses aggregate CPNI for marketing purposes or provides aggregate CPNI to any business associated with the telecommunications utility for marketing purposes, it must also provide aggregate CPNI to any third party upon request. A telecommunications utility must offer to provide aggregate CPNI under the same terms and conditions and at the same price as it is made available to all businesses affiliated with the telecommunications utility and to telecommunications utility personnel marketing supplemental services, provided that the third party must specify the type and scope of the aggregate CPNI requested. A telecommunications utility must, upon request, provide such aggregate CPNI to a third party under any other alternative terms, conditions, or prices that are just and reasonable under the circumstances and that are not unreasonably preferential, prejudicial or discriminatory.
- (g) **Caller Identification Services.**
 - (1) **Application.** This subsection shall not be construed to apply to:
 - (A) an identification service that is used within the same limited system, including a central office based PBX-type system;
 - (B) information that is used on a public agency's emergency telephone line or on a line that receives the primary emergency telephone number (9-1-1);
 - (C) information passed between telecommunications utilities, enhanced service providers, or other entities that is necessary for the set-up, processing, transmission, or billing of telecommunications or related services;
 - (D) information provided in compliance with applicable law or legal process; or
 - (E) an identification service provided in connection with a "700," "800," or "900" access code telecommunications service.