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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Implementation of the)
Telecommunications Act of 1996:)
)
Telecommunications Carriers' Use)
of Customer Proprietary Network)
Information and Other)
Customer Information)

CC Docket No. 96-115

To: The Commission

COMMENTS

Small Business in Telecommunications, Inc. (SBT), by its attorneys, hereby files its Comments in the above captioned matter. In support of its position, SBT shows the following.

SBT supports the distinctions among telecommunications services which the Commission has tentatively concluded are appropriate. SBT also requests that the Commission exercise its authority to forbear from applying the restrictions of Section 221(c)(1) of the Communications Act of 1932, as amended, 47 U.S.C. §221(c)(1) (the Act), to any small business which has gross annual revenues which do not exceed three million dollars.

SBT is an association of numerous operators of small telecommunications businesses and associated supporting members. SBT voting membership is limited to small operators whose annual gross revenue for the past three years has not exceeded 20 million dollars. Most SBT members are involved in the provision of radio telecommunications services, including local and regional radio common carrier service, private carrier service, and commercial mobile radio

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service (CMRS). No SBT member is engaged in the provision of either local exchange service or interexchange telephone service, except as a reseller of interexchange service provided by means of facilities owned by an interexchange carrier.

SBT supports the distinctions among telecommunications services set forth at paragraph 22 of the Notice of Proposed Rule Making (NPRM). The tentative categories of telecommunications services are “local (including short-haul toll); interexchange (including interstate, intrastate, and international long distance offerings, as well as short-haul toll); and commercial mobile radio service (CMRS)”. Assuming that the Commission’s reference to “local” is to local telephone exchange service and that the reference to “interexchange” is to interexchange telephone service, these distinctions should provide large carriers with the flexibility necessary to continue to develop and meet the needs of their customers. However, in an abundance of caution, and because the categories tentatively suggested by the NPRM may be unnecessarily limiting to small business as competition continues to grow, SBT respectfully suggests an additional means by which the Commission can distinguish between those telecommunications carriers which are more likely and which are less likely to raise the privacy and competitive concerns voiced in the NPRM.

The protections for the public interest which the Commission adopted in its Computer II and Computer III proceedings clearly were based on the recognition that increased size of a business, alone, creates increased hazards to privacy and to competitiveness. A local exchange carrier or a major interexchange carrier has technical and marketing resources which are held

by few other businesses. Because they have served a high percentage of the members of the general public over a vast geographic area for more than a century, both local exchange and interexchange carriers have a unequalled wealth of statistical customer data and unequalled resources for analyzing that information and applying it to marketing of services. Increasingly, as some paging operators exceed one million customers and some two way radio system operators exceed 100-thousand subscribers, some of the major radio carriers appear to be approaching a comparable level of customer analysis and marketing skill and sophistication in their fields.

A very large carrier has a great deal of power to design a new telecommunications service to meet the needs of a discernable segment of its customer base, to design and build novel equipment and software to provide the service, to price that service at a highly attractive level, and to market that service with saturation advertising. In contrast, a small business in telecommunications is far more limited in the extent to which it can develop any meaningful statistical information about its customer base. A small business is particularly limited in the extent to which it can devise a new service to meet a need which its customers barely perceive, design and construct the hardware and software required to provide the service, and then undertake the level of media advertising necessary to sensitize the public to the need for the service and inform the public of the service's availability from the carrier.

A large carrier truly deals with the public at large, and *en masse*. A large carrier designs and markets a service in contemplation of a mass need and a mass demand for the service. For

that reason, a large carrier has less cause to market to specific users rather than to segments of the public. In contrast, a small business in telecommunications deals with the specific and specialized needs of a small number of customers, each of which it comes to know individually and well. The large carrier deals with the full range of humankind, including many persons who have only a limited appreciation of their communications needs. The subscribers of a small carrier are far more likely than the general public to have a full and clear understanding of their needs as a subscriber and likely to be less vulnerable than some segments of the general public to overreaching in the marketing of telecommunications services.

Because a small business deals on a day-to-day basis with a relatively small number of customers, and because the ability of a small telecommunications carrier to offer its services through media advertising is sharply circumscribed by its need to earn a profit in a fully competitive environment, a small business, if it is to compete and survive, needs a full range of flexibility to meet every telecommunications service need of its existing customers. Because of the nature of the relationship between a small carrier and its subscribers, a small carrier has a distinctly greater need than a major carrier to be able to base its development and marketing of specific services to each specific subscriber on the basis of what it has learned from providing a service to that subscriber.

A large carrier can base its design of a new service on statistical customer data and expect generally to succeed by offering the new service to a broad segment of the public, relying on a projection that a certain percentage of the public will choose the new service. However,

a small carrier has neither the resources of extensive statistical information from a large number of subscribers nor a useful means of analyzing and applying such information to its selection of an additional service offering, nor does the small carrier have the resources to offer its services to the general public by means of extensive media advertising. If a small carrier is to grow and expand by extending the range of services which it provides to existing customers, it needs the flexibility to take into account what it has learned about a certain customer's proprietary network in offering an additional service to that certain customer.

While this is no local exchange carrier or a facilities-based interexchange carrier which is a small business, a small business can best meet the specialized needs of each of its subscribers if it is to offer each subscriber the CMRS, local exchange resale, and interexchange resale service which is ideally suited to the existing communications network of the specific subscriber. As resale of local exchange service becomes a reality, that opportunity can be expected to increase the competitiveness of a small CMRS operator, if the operator is not unduly restricted in its relations with its customers. Accordingly, in addition to the distinctions which the Commission proposed at paragraph 22 of its NPRM and which SBT supports, SBT respectfully requests that the Commission exercise its authority to forbear from the application of Section 222(c)(1) of the Act to small business in telecommunications.

Section 10(a) of the Telecommunications Act provides that

Notwithstanding section 332(c)(1)(A) of this Act, the Commission shall forbear from applying any regulation or provision of this Act to a telecommunications

carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of their geographic markets, if the Commission determines that --

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.

Section 10(b) of the Telecommunications Act provides that

In making the determination [that forbearance is consistent with the public interest], the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.

As explained above, the ability of a small business to impose unjust or unreasonable charges, practices, classifications, or regulations on its valued customers is essentially non-existent. Even in the most rural areas, there are multiple, competing small carriers and no small operator can expect to maintain its trade if it attempts to impose unjustly or unreasonably on its customers. Every consumer of the services of a small carrier has choices beyond the service offerings of that carrier alone. There is, and can be expected to continue to be, if the Commission does not hobble it, vigorous competition among small carriers nationwide, and between small carriers and large. The public interest and competitiveness will be best served

by continuing to allow small carriers to meet, in particular, the specialized needs of those segments of the market which are not met by the offerings of the major carriers.

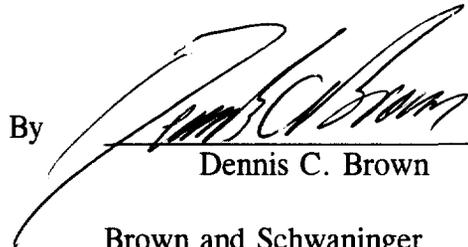
Based on the Commission's experience and precedent, SBT suggests that the Commission should recognize that the ability of a small carrier to harm either its precious customers or the public interest is limited by direct proportion to its size. Based on the Commission's experience and precedent, SBT respectfully requests that the Commission forbear from applying new Section 222(c)(1) of the Act to any telecommunications carrier whose annual gross revenue does not exceed three million dollars. At that level of revenue, SBT suggests that all of the criteria set forth by the Telecommunications Act for the justification of forbearance are fully met and that forbearance is fully justified for that class of small telecommunications carriers.

Conclusion

For all the foregoing reasons, SBT supports the categorization of services proposed by the Commission's NPRM and respectfully requests that the Commission forbear from applying new Section 222(c)(1) of the Act to the class of truly small telecommunications carriers.

Respectfully submitted,
SMALL BUSINESS
IN TELECOMMUNICATIONS

By



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