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Before the
Federal Communications Commission
Washington, DC 20554

JUN 17 1996

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
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COMMENTS

Teleport Communications Group Inc. ("TCG"), hereby submits its Comments on the Commission's Notice of Proposed Rulemaking¹ ("NPRM") regarding the implementation of § 702 (which added a new § 222 to the Communications Act of 1934, as amended) and § 725(d) of the Telecommunications Act of 1996 ("1996 Act").²

I. INTRODUCTION

In its NPRM, the Commission seeks comment on a variety of issues concerning § 222 in an effort to clarify the requirements placed on

¹Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, FCC 96-221, released May 17, 1996.

²Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

0213

telecommunications carriers to protect the confidentiality of customer proprietary information. TCG supports the Commission's efforts to balance consumer privacy and competitive considerations to ensure that telecommunications carriers comply with their new statutory obligations to maintain the privacy of Customer Proprietary Network Information ("CPNI").³

Toward this end, TCG believes that the Commission should refrain from unnecessarily imposing the CPNI regulatory requirements previously established in its Computer II⁴ and Computer III⁵ decisions to nascent competitive telecommunications carriers that are not affiliated with AT&T, RBOCs, or GTE. As detailed below, such safeguards could adversely affect a nascent local exchange carrier's ability to provide competitive telecommunications services and, therefore, would be contrary to the 1996 Act. TCG also agrees with the Commission's tentative conclusion that specific customer notification procedures will benefit the public and recommends an administratively simple set of requirements.

³NPRM at ¶2.

⁴Amendment of Section 64.702 of the Commission's Rules and Regulations ("Computer II), 77 FCC 2d 384 (1980), recon., 84 FCC 2d 50 (1980), further recon., 88 FCC 2d 512 (1981), aff'd sub nom. Computer and Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. Denied, 461 U.S. 938 (1983).

⁵Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III), CC Docket No. 95-229, Phase I, 104 FCC 2d 958 (1986), recon., 2 FCC Rcd 3035 (1987), further recon., 3 FCC Rcd 1135 (1988), second further recon., 4 FCC Rcd 5927 (1989).

II. DISCUSSION

A. The Commission Should Not Impose CPNI Requirements Upon Competitive LECs Beyond Those Set Forth in Section 222 of the Act.

The 1996 Act added a new § 222 to the Communications Act of 1934, as amended,⁶ separately establishing a comprehensive set of standards and requirements for protecting the privacy of customer information. TCG submits that the new § 222 sufficiently protects customer privacy, and the Commission should not expand its requirements for nascent competitors.⁷ The Section broadly states as a general principle that:

“Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers”⁸

The Act prohibits any carrier from using CPNI for any reason other than for the single purpose of providing telecommunications services, including publishing directories, unless the carrier receives an “affirmative written request” by a customer to disclose such information to a specifically designated person.⁹ The

⁶47 U.S.C. §§151 *et seq.*

⁷*See* 47 U.S.C. §222(a)-(f).

⁸47 U.S.C. §222(a). Sec. 222(f) defines CPNI as “(A) information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information. 47 U.S.C. §222(f)(1).

⁹47 U.S.C. §222(c).

only exceptions to the privacy requirements set forth in Section 222 relate to use of CPNI for billing and collection purposes, for protection against fraudulent, abusive or unlawful use of services, and for inbound telemarketing, referral or administrative services for the duration of the call.¹⁰

TCG agrees with the Commission's tentative conclusion that it is not in the public interest, at this time, to extend all of the pre-existing CPNI rules (established in Computer II and Computer III) to nascent competitive telecommunications carriers that are not affiliated with AT&T, the RBOCs, or GTE. After all, the underlying purpose of the Commission's original CPNI rules was to protect nascent competitors -- chiefly independent enhanced service providers and customer premises equipment suppliers -- from anticompetitive practices by carriers possessing substantial market power.¹¹ Extension of the principal to protect new local exchange carriers -- while not burdening them with unnecessary regulation -- is certainly consistent with the Commission's past practices in this area.

As the Commission recognized in Computer III, without such safeguards, monopoly carriers could use CPNI obtained by virtue of their market position to gain an anticompetitive advantage in a related and (potentially) more competitive

¹⁰47 U.S.C. §222(d).

¹¹This concern was also addressed in Computer II, where the Commission adopted its structural safeguards ". . . not to discriminate in the provision of "bottleneck" services requirements. . ." 50 Fed. Reg. 33581, at ¶ 55. In its Computer III decision, the Commission "sought to tailor more directly the extent of [its] regulation to the degree of competition in particular markets, in order to permit the public to realize the full benefits of competition where competition can function. 104 FCC 2d at 962, ¶ 2.

market.¹² Presently, nascent telecommunications carriers have virtually zero percent of the telecommunications market and are far from being in a position to use CPNI for anticompetitive purposes. The concerns raised in Computer II and Computer III regarding the use of CPNI therefore do not apply to competitive telecommunications carriers with very little market share and no market power. Moreover, the administrative burdens that would be imposed on new competitors by unnecessary CPNI regulation will simply slow the competitive process that is at the heart of the 1996 Act.

Moreover, even assuming that a competitive carrier could use CPNI in an anticompetitive fashion -- a proposition that TCG does not agree with -- § 222 of the Act offers sufficient protection for carriers and end users against such behavior. Indeed, the drafters of the 1996 Act would appear to have believed that the language incorporated in § 222 would sufficiently guard against anticompetitive behavior by competitive telecommunications carriers, since they did not incorporate language that would impose the additional Computer II and Computer III requirements into Section 702 of the 1996 Act.

Even if the Commission were to conclude that additional requirements, which currently apply to AT&T, RBOCs, and GTE, should be extended to all telecommunications carriers, determining which of the varying pre-existing requirements should apply to competitive telecommunications carriers would be a controversial and difficult process. As the Commission notes, its Computer III

¹²NPRM at ¶4.

rules are not uniform.¹³ Although AT&T is subject to CPNI restrictions under Computer III, its restrictions vary from those applied to the RBOCs.¹⁴ For example, RBOCs are required to obtain written authorization from customers that subscribe to more than 20 lines before they can use CPNI to market enhanced services, while AT&T is not subject to the same requirement. In addition, RBOCs must notify multi-line customers annually of their right to restrict disclosure of CPNI, while AT&T must only provide such notification in a one-time billing insert. Deciding which of these differing standards to apply to competitive carriers would itself be a difficult process, even if the Commission could establish a legal and policy basis to extend these requirements to carriers lacking market power.

B. Procedures Concerning Customer Notification Requirements Should Be Administratively Simple and Offer Some Flexibility to Carriers

TCG concurs with the Commission's view that customers should be notified of their rights to restrict access to their CPNI. TCG believes that the Commission should allow for flexibility in the notice requirements, particularly for competitive carriers. For example, carriers should have the option to obtain notification orally and simultaneously with the carrier's effort to seek approval for CPNI use, or to receive advance written notification with bi-annual updates. Under either scenario, customers would affirmatively agree to the use of the CPNI information before a carrier can use such information for other than the provision of telecommunications

¹³See NPRM at ¶5-6.

¹⁴NPRM at ¶6.

services as required under § 222. Giving carriers options for obtaining CPNI approval will allow them to choose the procedure that most efficiently fits into their particular marketing practices. TCG urges the Commission, therefore, to adopt administratively simple notification standards that require an affirmative response, either orally or in writing, from a carrier's customer and provide appropriate flexibility to the carriers.

III. CONCLUSION

For the reasons stated herein, TCG recommends that the Commission refrain from imposing additional CPNI requirements on competitive telecommunications carriers not affiliated with AT&T, RBOCs, or GTE. TCG also recommends that the Commission adopt administratively simple notification procedures that require an affirmative response from a customer before CPNI information can be used and that afford carriers appropriate flexibility to adopt procedures that can be easily administered.

Respectfully submitted,

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