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

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FEDERAL COMMUNICATIONS COMMISSIC.
OFFICE OF SECRETARY

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 OF THE INFORMATION
TECHNOLOGY ASSOCIATION OF AMERICA

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EXECUTIVE SUMMARY

The Information Technology Association of America ("ITAA") urges the Commission to adopt a minimum number of straightforward, enforceable rules to govern the handling of customer proprietary network information ("CPNI") and subscriber list information so that the pro-competitive goals of Section 222 of the Communications Act can be achieved. In adopting Section 222, Congress recognized that carriers' unique access to this information raises significant competitive concerns. Those concerns are well-grounded. In the past, ITAA member companies have encountered carrier practices which undermined the Commission's existing CPNI rules. If properly implemented, Section 222 can limit carriers' ability to use CPNI and subscriber list information to the disadvantage of non-carrier enhanced service and subscriber list providers.

To achieve this end, the following principles should be adopted:

- Carriers should provide their customers annual written notification of their CPNI rights and should obtain written authorization to use such information for purposes unrelated to services from which the information was derived;
- The Commission should oversee the carriers' written notification and authorization forms, requiring, for example, that such forms instruct customers that they may deny access, allow partial access, or withdraw a carrier's access to CPNI;
- The Commission should facilitate access to local exchange carriers' ("LECs") aggregate CPNI by requiring LECs to file notices with the Commission regarding the availability of aggregate CPNI and by requiring aggregate CPNI to be provided in a conventional machine-readable form;
- Computer III's CPNI requirements should continue to apply to the Bell Operating Companies and to GTE given their unique access to extraordinarily large stores of CPNI; and
- The Commission should require carriers to provide subscriber list information in a conventional machine-readable form, but allow parties to otherwise negotiate the transfer of such information (unless intervention later proves necessary).

TABLE OF CONTENTS

EXECUTIVE SUMMARY ii

I. INTRODUCTION AND INTEREST OF ITAA 2

II. CARRIERS SHOULD BE REQUIRED TO DEAL WITH CUSTOMER CPNI AND AGGREGATE CPNI IN A MANNER THAT PREVENTS SUCH INFORMATION FROM BEING USED ANTICOMPETITIVELY 3

A. NOTIFICATION OF CPNI RIGHTS AND AUTHORITY TO USE CPNI MUST BE PROVIDED IN WRITING 5

B. THE COMMISSION SHOULD OVERSEE THE CARRIERS' WRITTEN NOTIFICATION AND AUTHORIZATION FORMS 6

C. THE COMMISSION SHOULD FACILITATE ACCESS TO LECS' AGGREGATE CPNI 8

D. COMPUTER III'S CPNI REQUIREMENTS SHOULD CONTINUE TO APPLY TO THE BOCS AND TO GTE 9

III. INTERESTED PARTIES SHOULD BE ALLOWED IN THE FIRST INSTANCE TO NEGOTIATE ACCESS TO SUBSCRIBER LIST INFORMATION 10

IV. CONCLUSION 11

EXHIBIT A attached

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**COMMENTS OF THE INFORMATION
TECHNOLOGY ASSOCIATION OF AMERICA**

The Information Technology Association of America ("ITAA"), by its attorneys, hereby submits the following comments in response to the Notice of Proposed Rulemaking ("Notice") which the Commission issued in the above-captioned proceeding on May 17, 1996.¹ In the Notice, the Commission has solicited comment on how to implement new Section 222 of the Communications Act which sets forth the obligations of telecommunications carriers with regard to customer proprietary network information ("CPNI") and subscriber list information.² As set forth more fully below, ITAA urges the Commission to establish a minimum number of straightforward, enforceable rules to govern

¹ See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Notice of Proposed Rulemaking, CC Docket No. 96-115, FCC 96-221 (released May 17, 1996) [hereinafter "Notice"].

² See Pub. L. No. 104-104, §702, 110 Stat. 56, 148-49 (1996) [hereinafter the "1996 Act"].

the handling of such information so that the pro-competitive goals of Section 222 can be achieved.

I. INTRODUCTION AND INTEREST OF ITAA

ITAA is the principal trade association of the nation's information technology industries. Together with its twenty-five affiliated regional technology councils, ITAA represents more than 9,000 companies throughout the United States. ITAA's members provide the public with a wide variety of information products, software and services. Chief among these, at least from the Commission's perspective, are network-based enhanced services. The enhanced services furnished by ITAA's member companies are used by business, government and residential customers, and include such diverse offerings as credit card authorization, computer-aided design and manufacturing, database retrieval, electronic data interchange, gateways, information management, payroll processing, transaction processing, voice mail and other remote access data processing services.

ITAA's member companies offer their enhanced services in a vibrant, highly competitive marketplace, while at the same time relying on the less than fully competitive basic transmission services of telecommunications carriers. As transmission and information technology becomes more and more powerful, ITAA's member companies anticipate providing even more sophisticated enhanced services to their rapidly expanding customer bases. To ensure that the enhanced services of today and tomorrow are provided on a level, competitive playing field, it is imperative that telecommunications carriers not be allowed to exploit their unique access to CPNI to promote their own enhanced services to the detriment of independent enhanced service providers ("ESPs"). New Section 222 was carefully crafted

by Congress to achieve that goal. To implement the statute, the Commission need take only a few, uncomplicated steps to protect the enhanced services market from carriers' potentially anticompetitive practices.

II. CARRIERS SHOULD BE REQUIRED TO DEAL WITH CUSTOMER CPNI AND AGGREGATE CPNI IN A MANNER THAT PREVENTS SUCH INFORMATION FROM BEING USED ANTICOMPETITIVELY

As an initial matter, ITAA concurs with the Commission's assessment that, under Section 222, "CPNI obtained from the provision of any telecommunications service may not be used to market information services."³ The 1996 Act's legislative history makes clear that Section 222(c), in particular, is intended to restrict the ability of carriers to use CPNI.⁴ Thus, unless a carrier receives prior customer approval, it may use CPNI only "in its provision of the telecommunications service for which such information is derived or in its provision of services necessary to . . . the provision of such telecommunications

³ Notice at ¶ 26. For purposes of this proceeding, ITAA sees no material difference between the term "information services" as used in the 1996 Act and the Commission's traditional definition of enhanced services.

⁴ New Section 222(c)(1) states:

Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.

1996 Act, 110 Stat. at 148.

service."⁵ As the Notice recognizes, Section 222 will foster competitive equity by preventing carriers with access to CPNI from using that access, without customer authorization, to gain an unfair advantage in the provision of additional services.⁶

In adopting Section 222, Congress recognized that the carriers' unique access to CPNI is a significant competitive concern. The provision is thus consistent with the Commission's previous findings and policies regarding the use of CPNI by the Bell Operating Companies ("BOCs") and GTE Corporation.⁷ The statute, however, goes further. It applies to all telecommunications carriers and to the CPNI of all customers.

Congress' concerns about carrier misuse of CPNI vis-a-vis independent ESPs are well-grounded. Because of their access to CPNI, carriers often know more about a customer's use of communications than the customer itself. Unless access to this information is restricted, two fundamental problems can arise. First, carriers can use CPNI to target the sale of their own enhanced services to particular customers based on the customers' use of regulated telecommunications services and, second, carriers can use CPNI to determine what enhanced services their competitors are providing to third parties. The Commission's existing CPNI rules recognize that, in today's market, the nation's largest local carriers have an incentive to use such CPNI to the disadvantage of non-carrier ESPs. In adopting Section 222, Congress has recognized that other carriers have this same incentive as well.

⁵ H.R. Rep. No. 458, 104th Cong., 2d Sess., 205 (1996).

⁶ See Notice at ¶ 24.

⁷ See id. at ¶¶ 4-5.

ITAA therefore recommends that the Commission be guided by the four basic principles set forth below in implementing Section 222. In the absence of the kinds of implementing regulations described below, Section 222 will not achieve its intended goals and the public will be denied the benefits of a competitive enhanced services marketplace.

A. Notification of CPNI Rights and Authority to Use CPNI Must be Provided in Writing

Consistent with the intent of new Section 222 and the Commission's longstanding CPNI policies, the Notice asks whether carriers should be required to provide customers with written notification of their CPNI rights and obtain prior written approval from customers before using their CPNI. Alternatively, the Notice suggests that Section 222 might be enforced by simply requiring oral notification and accepting oral approval. The Notice further suggests that the statute is unclear as to what kind of authorization is required, since written authorization is only clearly required before CPNI is provided to third parties and oral authorization is only clearly permitted for inbound telemarketing activities.⁸

If Section 222 is to be effective in preventing the misuse of CPNI, the Commission should require the carriers to provide their customers with annual written notification of their CPNI rights and to obtain written authorization before using such information for purposes unrelated to the services from which the information was derived.⁹ The suggestion that oral notification and oral authorization might be relied upon to ensure

⁸ See id. at ¶¶ 30-31.

⁹ To allow adequate enforcement of Section 222, carriers should also be required to maintain records of their notifications and customer authorizations for three years.

compliance with Section 222 is naive at best. In the absence of written notification and authorization, there is no way for the Commission or a competitor to know whether a carrier has effectively notified customers of their rights and obtained proper consent. Although the Commission has indicated that carriers would bear the burden of proving compliance, it would be impossible in practice to confirm that a carrier has carried out its obligations under Section 222.

The Notice itself observes that written notification and authorization are specific and verifiable.¹⁰ By contrast, oral notification and authorization are inherently vague and certainly not auditable. There is no way of knowing whether an oral notification was properly given and understood, whether an oral authorization was given by an individual with the authority to do so, or whether the authorization, if limited, was correctly understood by the carrier's representative. Worse, oral notification and authorization are subject to abuse. Given the unpredictable content of telephone conversations, a carrier's representative could easily provide notice in a perfunctory fashion, then solicit a customer to waive the protections of Section 222. Common sense dictates that Congress would not have enacted detailed and restrictive rules governing the use of CPNI if those rules could be readily circumvented through oral notification and authorization procedures.

B. The Commission Should Oversee the Carriers' Written Notification and Authorization Forms

Even with written notification and authorization obligations, the carriers would still be in a position to use their unique access to CPNI for their unfair competitive advantage

¹⁰ See id. at ¶ 29.

by carefully crafting their authorization forms so as to defeat the purpose of Section 222. ITAA's concerns in this regard are by no means hypothetical. In the past, ITAA member companies have been provided CPNI authorization forms by local exchange carriers ("LECs") which were formatted so as to encourage these companies to disclose their CPNI to the LECs for other purposes. In one instance, a LEC's form gave the customer the "option" of disclosing all of its CPNI or a portion thereof. The form did not provide the customer with the option of denying access to its CPNI. In a second instance, the LEC's form gave the customer the "option" of disclosing all of its CPNI, or all the CPNI of itself and of all of its subsidiaries and accounts. Again, no option to deny access to CPNI was given. ITAA member companies also have been told that they could not receive basic transmission services unless they signed these forms so as to allow carrier access to their CPNI, and on other occasions, they have been urged to release CPNI in order to ensure proper servicing of their transmission service accounts.¹¹

To prevent the carriers from eviscerating Section 222, the Commission either should (i) prescribe the format which CPNI notification and authorization forms should take or (ii) require carriers to provide the Commission with copies of their forms. In the latter case, the Commission should make these documents publicly available and afford interested parties the opportunity to comment.

In either case, the carriers should be expressly prohibited from using their unique position with regard to their customers to induce customers to execute CPNI

¹¹ See Letter from Joseph P. Markoski to Chairman Alfred C. Sikes, CC Docket No. 88-2, CC Docket No. 90-623 (July 8, 1992) (attached as Exhibit A).

authorization forms. Carriers should be obligated to objectively apprise customers of the customers' ability to control the dissemination and use of their own CPNI. In this regard, the carriers should be required, at a minimum, to notify their customers that they may deny or authorize partial access to CPNI (e.g., for limited time periods or limited purposes), and that they may later withdraw any authorization given. The Commission's rules should reflect Congress' ultimate policy determination that customers, not carriers, should control the disposition of their CPNI. Without proper Commission oversight and informed customer control, that goal will not be attained.

C. The Commission Should Facilitate Access to LECs' Aggregate CPNI

Section 222(c)(3) authorizes the LECs to use aggregate CPNI for purposes other than the provision of telecommunications service, only if such CPNI is made available to others on a reasonable and nondiscriminatory basis. In the Notice, the Commission asks whether, in order to satisfy this requirement, the LECs should be required to publish notices in trade publications or newsletters regarding the availability of aggregate CPNI as the Computer III rules now require.¹²

ITAA agrees with the Commission that such notices should be required, but believes that there is a more efficient and effective way of apprising the public of the availability of aggregate CPNI. Specifically, the Commission should require the LECs to file notices regarding the availability of aggregate CPNI with the Commission, and the filing of this information should be periodically noted in the Commission's daily releases. Such an

¹² See Notice at ¶ 37.

approach would be less costly and presumably easier for carriers. They could avoid the cost of buying advertisements or publishing newsletters. Such an approach would also give interested parties fully independent access to the carriers' notices. Interested parties can ordinarily research the Commission's public records in less than 24 hours. It is far less certain how quickly interested parties could obtain a newsletter or copy of an advertisement. Such an approach also would give the Commission ready access to information on the types of aggregate data being compiled.

In addition, the Commission should make clear that the LECs' obligation to provide "reasonable" access to aggregate CPNI includes the obligation to provide the CPNI in a conventional machine-readable form (i.e., which the requesting party itself can then reformat). Requests for aggregate CPNI should not be answered with stacks of paper formatted only as the LEC sees fit. For the data to be reasonably useful, it must be susceptible to reformatting and manipulation by the requesting party, using readily available software.

D. Computer III's CPNI Requirements Should Continue to Apply to the BOCs and to GTE

The CPNI obligations of Section 222 expand upon those which the Commission developed for the BOCs and GTE in the Computer III proceeding. As the Notice recognizes, the 1996 Act codifies and strengthens the policies underlying the Computer III rules.¹³ There is thus no reason to relieve the BOCs and GTE of their Computer III obligations. Such a result is particularly appropriate given the unique

¹³ Id. at ¶ 3.

competitive advantages which the BOCs and GTE continue to possess with respect to access to, and use of, extraordinarily large stores of CPNI.

The BOCs and GTE should therefore be required to keep in place mechanisms to restrict unauthorized internal access to CPNI (i.e., computer password systems, filing mechanisms, etc.). ITAA recognizes that extending this requirement to other, smaller LECs could prove to be burdensome. A continuation of this requirement, however, would not impose any additional burden on the BOCs and GTE. At the same time, the retention of these safeguards against the unauthorized use of CPNI would continue to protect and promote competition in the enhanced services marketplace.

III. INTERESTED PARTIES SHOULD BE ALLOWED IN THE FIRST INSTANCE TO NEGOTIATE ACCESS TO SUBSCRIBER LIST INFORMATION

New Section 222(e) of the Communications Act addresses somewhat different concerns than CPNI. Its principal purpose is to ensure that independent publishers of subscriber lists have access to subscriber list information at reasonable and nondiscriminatory rates, terms and conditions.¹⁴ ITAA understands that independent publishers have historically had difficulty obtaining such information from the LECs. Section 222(e) should address any remaining concerns in this regard. Since the LECs have no unique obligation to hold this information in confidence, interested parties should be free to secure subscriber list information by contract. The Commission, however, should be prepared to intervene if this approach fails to yield Congress' desired outcome.

¹⁴ See H.R. Rep. No. 458 at 205.

To the extent that some elaboration of the statute is necessary, the Commission should make it clear that, as with aggregate CPNI, subscriber list information should be provided in a conventional machine-readable form. Given the abundance of available database software, the LECs should not encounter any difficulty in delivering subscriber list information subject to such a requirement.

IV. CONCLUSION

For all of the reasons set forth above, ITAA urges the Commission to implement Section 222 so as to achieve the pro-competitive, pro-consumer goals of Congress with respect to protection and use of CPNI and the availability of subscriber list information.

Respectfully submitted,

INFORMATION TECHNOLOGY
ASSOCIATION OF AMERICA



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June 11, 1996

EXHIBIT A

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July 8, 1992

Honorable Alfred C. Sikes
Chairman
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

Re: Bell Operating Company CPNI Practices

Dear Mr. Chairman:

We are writing on behalf of the Information Technology Association of America ("ITAA"), formerly known as ADAPSO, to apprise you of ITAA's concerns about the manner in which certain of the Bell Operating Companies ("BOCs") appear to be approaching multiline business customers and requesting access to their customer proprietary network information ("CPNI").

ITAA's concerns about the BOCs' CPNI practices are prompted by a number of recent incidents involving ITAA's member companies and two of the BOCs. The first incident involved BellSouth, and arose when one of ITAA's member companies placed an order for private line service. That member company received the attached "1992 CPNI Letter," and was advised by a BellSouth representative that its service order would not be processed unless and until the Response Form accompanying that letter was signed. (BellSouth's 1992 CPNI Letter and Response Form appear as Appendix I to this letter.)

The Response Form, however, presented ITAA's member company with only two choices; it could provide BellSouth with "access to all my CPNI" or it could provide BellSouth with "access to all my CPNI except" specifically designated information. The Response Form did not provide ITAA's member company with the option of denying BellSouth access to

Squire, Sanders & Dempsey

Honorable Alfred C. Sikes
July 8, 1992
Page 2

all of its CPNI.*/ By refusing to process the order for private line service until the Response Form was signed, BellSouth successfully discouraged the ITAA member company in question from exercising its right to deny BellSouth access to its CPNI.

The second incident involved Southwestern Bell Telephone Company, and arose when another of ITAA's member companies received a CPNI letter and Authorization Form, accompanied by a note from one of Southwestern Bell's sales representatives. (Southwestern Bell's CPNI letter, Authorization Form and note appear as Appendix III to this letter.) The note from the sales representative stated that "I cannot stress the importance of this document [i.e., the CPNI authorization form] in relation to our ability to properly service your account." As was true of BellSouth's Response Form, Southwestern Bell's Authorization Form did not provide the ITAA member company with the option of denying Southwestern Bell access to its CPNI. Moreover, the billing clerk, to whom the note and Authorization Form were sent, was personally contacted by Southwestern Bell's sales representative, was advised that the Authorization Form was of no particular importance, and was encouraged to sign and return it.

What made this incident particularly disturbing to the member company in question was the fact that the Authorization Form -- if executed by this billing clerk -- would have provided Southwestern Bell with access to the CPNI of "all subsidiaries, locations and accounts associated with my company," not just the services for which the billing clerk was responsible. Although no CPNI was ultimately disclosed as a result of this incident, Southwestern Bell created an environment which -- unfairly and contrary to the spirit of the Commission's rules -- encouraged the disclosure of CPNI to Southwestern Bell's enhanced service operations.

*/ In this regard, BellSouth's Response Form is very different from Pacific Bell's "CPNI Annual Notification Reply Card," attached as Appendix II to this letter, which does provide a customer with the option of denying the carrier access to all of its CPNI.

Squire, Sanders & Dempsey

Honorable Alfred C. Sikes
July 8, 1992
Page 3

ITAA has also been advised by one of its member companies that representatives of both BellSouth and Southwestern Bell have taken the position that the Commission's rules permit them to deny basic service to customers that refuse to provide the BOCs with access to their CPNI. According to these two BOCs, their position is justified because the Commission's rules permit them to use the same personnel to market and process orders for both basic and enhanced services. Since these BOCs claim to no longer employ personnel who are responsible solely for basic service, these carriers argue that they are neither obligated nor able to process requests for basic service unless the customer is willing to provide the carrier with access to the customer's CPNI. In other words, these BOCs have interpreted the Commission's decision allowing them to integrate their operations in a way that completely subverts the Commission's CPNI rules. Plainly, this is not what the Commission intended.

The foregoing incidents were brought to ITAA's attention by the member companies involved. ITAA did not survey its members. As a consequence, ITAA can only speculate whether other enhanced service providers and multiline business customers have had similar experiences, whether these incidents reflect a deliberate course of conduct on the part of these BOCs to gain access to their customers' CPNI, or whether they are the unfortunate product of over-eager sales representatives. These incidents, however, do suggest the need for corrective action on the part of the Commission. Once CPNI is released to a BOC's enhanced service operations, the damage cannot easily be undone. A BOC's enhanced services personnel cannot realistically be expected to forget competitively sensitive information about their competitors, merely because they receive a subsequent notice restricting their access to the competitor's CPNI.

ITAA therefore urges the Commission to clarify its CPNI rules. Specifically, the BOCs should be directed to revise their CPNI authorization forms so as to provide users -- in a clear and conspicuous way -- with the option of denying the carriers access to all of their CPNI. The BOCs should also be instructed -- and their CPNI authorization forms should clearly state -- that the BOCs may not deny basic service to any customer merely because the customer

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Honorable Alfred C. Sikes
July 8, 1992
Page 4

restricts access to its CPNI. The access provided by the BOCs' CPNI authorization forms should also be limited to the CPNI associated with the billing name and address to which the form is sent. The BOCs should not be permitted to obtain access to all of a large customer's CPNI through a CPNI authorization form sent to a remote customer location along with a bill for a single business line.

If other enhanced service providers and multiline business customers report experiences similar to those outlined above, ITAA urges the Commission to revisit its recent decision in CC Docket No. 88-2 regarding the BOCs' CPNI obligations, and prescribe the contents of the BOCs' CPNI notices and adopt guidelines governing their contacts with customers regarding CPNI.

Respectfully,


Joseph P. Markoski

JPM:bb
Attachments

cc: Hon. James H. Quello
Hon. Sherrie P. Marshall
Hon. Andrew C. Barrett
Hon. Ervin S. Duggan
Cheryl A. Tritt
James D. Schlichting
Donna R. Searcy

APPENDIX I

BELLSOUTH'S "1992 CPNI LETTER"
AND "RESPONSE FORMS"

1992 CPNI LETTER

Notice to Large Business Customers:

The Federal Communications Commission (FCC) permits Southern Bell/South Central Bell and its affiliated BellSouth companies to sell you basic network telephone services, as well as customer premises equipment (e.g., telephone sets and PBXs) and enhanced services (e.g., voice messaging and videotext services). Other companies also provide similar customer premises equipment (CPE) and enhanced services.

In the course of providing local telephone service to you, we maintain certain information about your local telephone service arrangements. This information includes the type(s), location(s), and quantity of all the basic network services to which you subscribe, how much you use them (i.e., usage data), calling patterns, and billing records. We refer to such information as customer proprietary network information, or CPNI. Our policy has been and will continue to be to treat such information in a proprietary manner.

In the past, no action has been required on your part to allow us to use CPNI in marketing CPE or enhanced services to you. Recently, however, the FCC required that we obtain written authorization from customers like you who have more than 20 telephone lines before we use your CPNI in marketing enhanced services. For consistency and to avoid potential confusion, we are treating this prior written authorization requirement as if it also applies to our use of CPNI in marketing CPE.

To authorize BellSouth personnel to have access to your CPNI for marketing CPE and enhanced services to you, please fill out the appropriate authorization form and return it to us. If you choose not to authorize such access, no response is necessary.

Your right to authorize disclosure of CPNI to other CPE and enhanced service providers has not changed. You still have the right to authorize us to release your CPNI to other companies. To authorize us to disclose the information to other CPE and enhanced service providers, please fill out the appropriate authorization form and return it to us.

Please note: While we will continue to remind you annually of your rights, you may change your decision whether to authorize use or disclosure of your CPNI at any time by notifying your account representative in writing.

ATTACHMENT A

RESPONSE FORM - BELLSOUTH PERSONNEL AUTHORIZATION

I hereby authorize Southern Bell/South Central Bell and its affiliated BellSouth Companies to have access to and to use information about my local telephone service arrangements for purposes of marketing CPN and enhanced services to me as indicated below:

ACCESS TO ALL MY CPNI

ACCESS TO ALL MY CPNI EXCEPT AS FOLLOWS:

(Please identify the telephone accounts to which access should not be permitted. Use additional page if necessary.)

() _____ () _____ () _____

(Please indicate the type(s) of information for which access should not be permitted.)

Customer Service Records Customer Bill Records

(Please indicate the duration of this request).

Until Notified in Writing

Until the Following Date: _____

Customer Name: _____

Authorized by: _____

Printed Name and Title: _____

Date: _____

ATTACHMENT B

RESPONSE FORM - VENDORS OTHER THAN BELLSOUTH

Please arrange for the disclosure of my CPNI as follows:
(You may mark more than one):

To all CPE and enhanced service providers who request access. (This option will remain in place until you notify Southern Bell/South Central Bell otherwise in writing.)

To the vendors listed below (use additional page(s) if necessary); (This option authorizes disclosure to the listed vendors upon our receipt of this response form. For future releases of information you must submit further authorization in writing.)

Vendor's Name: _____

Mailing Address: _____

Vendor's Name: _____

Mailing Address: _____

Customer: _____ Billing Telephone #: _____

Authorized By: _____ Date: _____

Printed Name: _____ Title: _____

This response form does not imply nor empower customer's agent status for any vendor specified above.

APPENDIX II

PACIFIC BELL'S "CPNI ANNUAL
NOTIFICATION REPLY CARD"