

these requirements would be directly contrary to Section 222 itself, as well as to the overall purpose of the 1996 Act. The 1996 Act provided the means that Congress deemed to be necessary to ensure the “opening [of] all telecommunications markets” to competition. Given the clear actions by Congress, it would be unreasonable for the Commission to conclude that it has a responsibility to somehow correct for “competitive advantages” that the Commission feels Congress failed to address in the 1996 Act.

IX. OTHER MATTERS

a. Availability of Subscription List Information

NYNEX agrees with the Commission’s conclusion (§43) that Section 222(e) applies not only to LECs, but to all providers of “telephone exchange service,” including interexchange carriers and cable companies. With regard to issues related to the interpretation of the definition of “subscriber list information in Section 222(f)” (§44), NYNEX urges that the Commission clarify that this information does not include either non-published or non-listed numbers. These numbers cannot be viewed as the “listed names of a subscriber” nor are these numbers “accepted for publication.” Second, “primary advertising classification” is the advertising classification or yellow pages “heading” chosen by the business subscriber for placement of its yellow pages listing. This information is gathered by the exchange service provider at the time of establishment of telephone service. This Section 222(e) requirement does not apply to any other yellow pages heading information, such as information gathered by a sales representative after the establishment of telephone exchange service. Finally, NYNEX agrees that “primary advertising classification” is not the same as “advertising” in Section 274(h)(2).

With regard to whether rules should be adopted dealing with the requirement that subscriber information be provided on “a timely and unbundled basis, under non-discriminatory and reasonable rates, terms and conditions,” NYNEX questions whether any regulations to implement this provision are necessary or appropriate. It would seem, for example, that it would be unwise to attempt to fashion regulations that would attempt to define what “timely,” “non-discriminatory,” and “reasonable” mean. Standards of this sort are included in statutes with a recognition that they cannot be subject to fixed determination. Whether or not a particular practice does or does not fall within a broad standard of this sort can be determined only on a case-by-case basis. If the Commission does decide to clarify these terms, rules should permit flexibility. “Timely” should mean within a reasonable time. “Non-discriminatory” should mean that carriers make the same information available on the same terms and conditions, including price and frequency, as they make the information available to their own directory publishers. “Unbundled” means that a person seeking subscriber list information cannot be compelled by a carrier to purchase other service or data in order to purchase subscriber list information. In addition, carriers should be required to permit the purchase of selected categories of information, such as selected exchanges.

With regard to whether safeguards are required to ensure that a person seeking subscriber list information is doing so for the purposes of “publishing directories,” NYNEX believes that this restriction can be guaranteed by the terms of the contract for the sale of subscriber list information. Requests for information should be in writing.

b. CPNI Disclosure to Third Parties

Section 222(c)(2) requires carriers to disclose CPNI when provided with a customer's written request to provide that customer's CPNI to a designated third party. The NPRM seeks comments as to whether any "additional mechanism or practices" should be required. NYNEX does not believe any such mechanism should be adopted beyond that specified by Congress. To do so would lead to the incurrence of additional cost and would be contrary to the intent of the 1996 Act.

c. Aggregate CPNI

The Commission seeks comments on whether the Commission should require LECs to provide notification to others regarding the availability of aggregate CPNI prior to using the aggregate CPNI themselves. NYNEX believes that requiring any notice would be inappropriate. Here again, if the Congress intended to impose such a requirement it easily could have done so. It would be especially inappropriate to require publication of a notice prior to the LEC's use. Such a restriction would severely hinder LECs' internal operations, would serve no useful purpose, and would be contrary to the Act.

X. CONCLUSION

These comments have suggested a number of revisions to the Commission's NPRM. These revisions will ensure that the Commission's CPNI and other customer information regulations reflect the intent of Congress in enacting Section 222.

Respectfully submitted,

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