

Before the
Federal Communications Commission
Washington, D. C. 20554

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JUN 26 1996

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

DOCKET FILE COPY ORIGINAL

CC Docket No. 96-115

**REPLY COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION**

The United States Telephone Association (USTA) respectfully submits its reply to the comments filed June 11, 1996 in the above-referenced proceeding.

In its comments, USTA observed that clarification of the requirements of the statute as well as the status of the Commission's current rules were necessary, particularly for those telecommunications carriers who had not been previously subject to CPNI requirements. The Commission's Notice of Proposed Rulemaking (NPRM), while recognizing Congress' intent to address both privacy and competitive concerns, contains proposals which go far beyond the requirements of § 222 and which are directly contrary to Congress' intent to require regulation only where necessary. Unfortunately, the comments of incumbent exchange carrier competitors share this flawed interpretation by, in many cases, recommending that CPNI requirements only apply to incumbent exchange carriers. Of course, such a result must be rejected. Not only would it be contrary to the statute, it would be contrary to the public interest.

More important, the comments of many parties ignore the detrimental impact their proposals would have on customers. Facilitating customer needs should be the focus of the privacy and competitive issues surrounding CPNI. USTA agrees with BellSouth that any rules the Commission does adopt should reflect reasonable customer expectations of information use by the carriers with whom the customer has a business relationship, should minimize customer confusion and should facilitate customers' desires for one-stop shopping.¹ USTA will discuss these issues in its Reply Comments.

I. SEC. 222 APPLIES TO ALL TELECOMMUNICATIONS CARRIERS.

It is clear that § 222 applies to all telecommunications carriers.² A telecommunications carrier is defined as any provider of telecommunications services. Congress did not exempt competitive local exchange carriers from the statutory requirements of § 222 and did not specify that certain statutory requirements would only apply to incumbent exchange carriers.³ Therefore, any recommendations to the contrary must be rejected.⁴ In addition, the Commission cannot exceed its statutory authority by treating the Act as the minimum standard and creating new requirements for incumbent exchange carriers as suggested by CompTel.

¹BellSouth at i.

²See, Pennsylvania Office of Consumer Affairs at 4-5, and SBC at 2.

³USTA does not believe that any party has made the requisite showing to allow the Commission to forbear from applying § 222 at this time. The Commission must carefully weigh any such requests to ensure that the privacy interests of customers are protected regardless of which carrier serves that customer.

⁴See, comments of AirTouch at ii, LDDS at 11, Intelcom at 2, and CompTel at 1.

Finally, because Congress intended that its rules be applied fairly to all telecommunications carriers, there is no reason to continue enforcement of the existing Computer Inquiry II and III rules that only applied to the RBOCs and GTE. Maintaining different rules for different carriers will only create customer confusion and will not serve any competitive or privacy interests. The Telecommunications Act of 1996 covers the field with regard to the protection of CPNI as well as to ensure that no carrier enjoys an unfair competitive advantage. It supplants any existing CPNI requirements.⁵

II. A NARROW INTERPRETATION OF TELECOMMUNICATIONS SERVICES IS NOT IN THE PUBLIC INTEREST AND IS CONTRARY TO THE WORDING OF THE STATUTE.

Many commenters agreed with USTA that the Commission's proposed interpretation of the term telecommunications services is too restrictive.⁶ Even those parties who did not object to the Commission's proposal pointed out that the Commission's reliance on traditional service and technological distinctions will necessarily result in rules which will become outdated given the rapid pace of competition and therefore will have to be revised at some point.⁷

The narrow interpretation of the term telecommunications service also ignores the detrimental impact on customers. It fails to meet the three goals listed above. The Commission's proposal would frustrate customer expectations by placing arbitrary limits on customers' abilities to engage in one-stop shopping. It would also create customer confusion by

⁵CompuServe at 7.

⁶USTA at 2, ALLTEL at 3, GTE at 10, AT&T at 6, Cincinnati Bell at 6, MCI at 4, U S WEST at 4, SBC at 5, and BellSouth at 10.

⁷Sprint at 3, Pacific Telesis at 7, NYNEX at 8, and WUTC at 5.

forcing customers to make distinctions based on technologies. A survey of customers conducted by Cincinnati Bell, included in its comments, demonstrates that customers strongly prefer a single provider and want to be advised of all the services that the provider offers. In fact, the majority of customers responding to the Cincinnati Bell survey indicated that they would not be concerned if Cincinnati Bell utilized customer information to make them aware of new services.⁸

Finally, the Commission's interpretation is inconsistent with the definition of telecommunications service. Telecommunications service is defined as the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. The definition does not distinguish as to technology, service or use. The definition of telecommunications is the transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received. Thus, the Commission's suggestion, at least at one point in the NPRM, that the scope of the term telecommunications service should focus on whether service offerings are part of an integrated package of services is more consistent with customer expectations, the definitions contained in the statute, as well as prior Commission policies, than the traditional service distinctions ultimately proposed.⁹

USTA strongly supports those parties that argued that the interests of customers will best be served by an interpretation of the phrase "services necessary to or used in the provision of

⁸See, also, U S WEST at 2 and Bell Atlantic at 6-7

⁹SBC at 6.

such telecommunication services” which meets the three goals stated above. For example, CPNI derived from the provision of one telecommunications service should be used to perform installation, maintenance and repair for any telecommunications service provided by that carrier.¹⁰ In addition, CPE and enhanced services necessary to or used in the provision of telecommunications service should also be included. This will properly reflect market realities and customer expectations. As Cincinnati Bell observes, it is reasonable to provide cellular service with the necessary CPE and to assume that certain features, such as Caller ID may be useful in connection with other types of service.¹¹

The Commission should interpret the plain meaning of the statute to be responsive to customer needs and to the procompetitive goals of the Act. § 222(c)(1) clearly permits CPNI derived from the provision of telecommunications service to be used in connection with any telecommunications service offering made by the carrier or an affiliated carrier, whether made singly for the “user’s choosing” or in combination with other offerings comprising an integrated telecommunications service package.¹²

III. WRITTEN APPROVAL IS ONLY REQUIRED TO DISCLOSE CPNI TO A THIRD PARTY.

Again, the Commission should not go beyond the requirements of the statute in determining when customer approval is required to use CPNI. As USTA pointed out in its

¹⁰Cincinnati Bell at 6-7 and SBC at 13.

¹¹Cincinnati Bell at 6. See, also Pacific Telesis at 4. Ameritech at 2, AT&T at ii, SBC at i and NYNEX at 12.

¹²SBC at 4.

comments, the statute does not require customer approval for the telecommunications services encompassed within § 222(c)(1)(A) and (c)(1)(B). The statute at § 222(c)(2) requires prior written approval only in cases where a customer wants to permit a carrier to disclose CPNI to a third party.¹³ §222(c)(1) requires customer approval to use CPNI for other than telecommunications service. However, telecommunications carriers should be permitted flexibility in determining what kind of approval is necessary in those instances where approval is required by the statute. The least burdensome approach would be, following notification of CPNI rights and absent customer direction to the contrary, to permit affiliated telecommunications carriers to use CPNI for the marketing of non-telecommunications services and products offered by the integrated entity.¹⁴ Such an approach will facilitate customer needs by meeting the three goals listed above, provide adequate customer protections and reduce the administrative burden on telecommunications carriers.

The suggestions of some parties would place too great a burden on customers. For example, CompTel suggests that written notice be required for more than just notice to third parties and that customers must initiate all calls and any inquiries for which CPNI would be used.¹⁵ The Cincinnati Bell survey demonstrates that customers do not want to undertake such burdens, but instead, expect their carrier to keep them informed of the services their carrier

¹³The suggestion of AT&T at 17 and Sprint at 5 that the incumbent carrier is required to supply CPNI to a carrier who has won a particular customer from the incumbent is contrary to the plain language of § 222(c)(2).

¹⁴AT&T at 13.

¹⁵CompTel at 6, and AICC at 11.

offers. Business customers in particular who have an established relationship with a carrier expect that their carrier will use all the information available to that carrier to provide information or to offer products which could benefit that customer.

Finally, USTA agrees that customer burdens will be reduced if customer authorization for the use of CPNI can be considered valid until the customer notifies the carrier that CPNI use is no longer authorized.¹⁶

IV. ADDITIONAL RESTRICTIONS PLACED ON THE PROVISION OF SUBSCRIBER LISTS BEYOND WHAT IS REQUIRED BY LAW SHOULD BE REJECTED.

A few parties suggest unnecessary rules to implement § 222(e). For example, ADP and MCI propose that the Commission establish a national price for the provision of subscriber lists.¹⁷ The statute does not call for such restrictions and there is no indication that Congress ever intended such rules.¹⁸

The Act requires that all telecommunications carriers that provide telephone exchange service be subject to this section. This would include incumbent exchange carriers as well as any new entrants in the local telephone market. The Act defines the subscriber list information which must be provided. The Act requires that the information be provided in a timely manner, on an unbundled basis and at reasonable and nondiscriminatory terms and conditions for the purpose of publishing directories. There is no need to promulgate rules to implement these provisions.¹⁹

¹⁶Cincinnati Bell at 8.

¹⁷Association of Directory Publishers (ADP) at 19. MCI at 23.

¹⁸Yellow Pages Publishers Association at 2.

¹⁹GTE at 18. Pacific Telesis at 18, and SBC at 17.

The specific details of providing subscriber lists should be left to the parties to negotiate.²⁰ There is no need for the Commission to intervene in that process, to prescribe the price or to mandate a particular format. The legislative history of this section reveals that Congress intended this section to meet “the needs of independent publishers for access to subscriber data on reasonable terms and conditions, while at the same time ensuring that the telephone companies that gather and maintain such data are fairly compensated for the value of the listings.”²¹ Pricing methodologies which do not permit incumbent exchange carriers to obtain fair compensation should be rejected.

V. THE STATUTE DOES NOT REQUIRE NOTIFICATION REGARDING THE AVAILABILITY OF AGGREGATE CPNI DATA.

Contrary to the suggestion of ITAA, the statute does not require incumbent exchange carriers to notify other parties of the availability of aggregate CPNI data.²² Again, there is no need for additional requirements.

VI. PREEMPTION SHOULD BE LIMITED TO ONLY THOSE STATE REQUIREMENTS THAT ARE MORE RESTRICTIVE THAN THE REQUIREMENTS OF THE STATUTE.

USTA agrees with those parties which propose that federal preemption should be limited to those instances in which the state requirements are more restrictive than what is required under

²⁰Virgin Islands Telephone Corporation at 2, ALLTEL at 6, Cincinnati Bell at 12, Information Technology Association (ITAA) at 10.

²¹H.R. Rep. No. 104-204, Part I, 104th Cong., 1st Sess. At p. 89 (1995). See, comments of Yellow Pages Publishers Association for a thorough discussion of the legislative history and of ADP’s unsuccessful attempts to include incremental costs as the reasonable rate.

²²ITAA at 8.

the statute or which are contrary to the statute.²³

VII. CONCLUSION.

USTA urges the Commission not to impose unnecessary regulations regarding CPNI. However, if rules are necessary they should be crafted so as to reflect reasonable customer expectations of information use by entities with whom the customer has a business relationship, minimize customer confusion and facilitate one-stop shopping.

Respectfully submitted,

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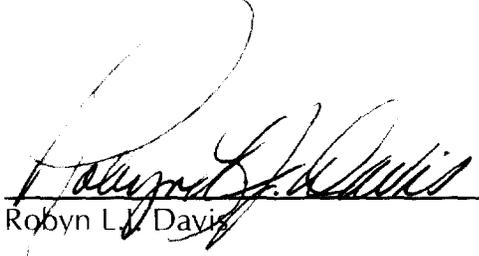
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²³SBC at 20. and Bell Atlantic at 10.

CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on June 26 1996 reply comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.


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