

**ORIGINAL**

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

JUN

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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**REPLY COMMENTS OF LDDS WORLDCOM**

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## SUMMARY

The comments uniformly show that the FCC has plenary jurisdiction to issue and enforce national CPNI rules under the new Telecommunications Act of 1996. Most commenters also agree with LDDS WorldCom that the 1996 Act gives the Commission authority to preempt state rules that are in direct conflict with the FCC's own rules.

Parties join LDDS WorldCom in supporting the FCC's proposed definition of "telecommunications service" as synonymous with the traditional market lines that delineate between local and interexchange services. However, LDDS WorldCom and others believe this approach will become problematic in the long-term as these regulatorily-maintained market distinctions inevitably begin to erode. As a result, the Commission should reexamine and refine its definition at regular intervals in the future.

LDDS WorldCom also agrees with several proposed clarifications sought by commenters which would further the statutory goal of protecting the consumers' CPNI from misuse. These proposals include: (1) prohibiting ILECs from providing local service CPNI to their long distance affiliates without prior customer authorization; (2) prohibiting ILECs who act as billing agents for IXC's from accessing that CPNI for their own unrelated use; (3) prohibiting carriers from using CPNI disclosed by their reseller customers except for the narrow purpose of providing telecommunications services to those customers; and (4) clarifying that a customer name, address, and telephone number is not CPNI when a carrier seeks to use it solely for its own marketing purposes.

Many commenters agree with LDDS WorldCom that a rule requiring written notification to customers best protects the customer's privacy rights in its CPNI. A federal right to protect CPNI is meaningless if the consumer is never given adequate notice of its existence.

Commenters correctly fear that verbal notice could be confusing or misleading to many consumers, and would inevitably lead to disputes. Those parties favoring verbal notification fail to demonstrate its superiority over written notification as a means of consumer protection.

Many commenters also join LDDS WorldCom in asserting that a customer's approval of a carrier's request to use its CPNI must be in writing. Commenters explain that a written authorization greatly reduces the ambiguity of verbal conversations, and ensures that the customer has voluntarily ceded access to its CPNI. Those ILECs who argue for verbal approval ignore the fact that Section 222 was intended primarily to protect the CPNI rights of consumers, not expand opportunities for carriers to use their customers' CPNI without permission.

Some ILECs claim that so-called "implied" or "inferred" customer authorization would be acceptable under the Act because local service customers would expect the ILECs, as part of their "voluntary" business relationship, to use their CPNI for any purpose. However, the ILECs' implied consent proposal should be rejected because, contrary to the clear carrier obligations and customer rights established by the Act, it implies far too much. Section 222 plainly states that CPNI cannot be accessed unless and until the carrier can demonstrate that the customer has given his or her "approval." An implied consent -- which interprets anything short of an absolute negative as an affirmative -- would not appear to meet this statutory standard.

Some ILECs also insist that stringent CPNI rules could infringe on their First Amendment right of free speech, and could constitute unlawful takings of what they consider to be their intellectual property assets. By definition, however, the right to determine the ultimate uses of CPNI belongs to the customer, not to the carrier. Protecting the consumers' rightful interests in their own CPNI has nothing at all to do with the ILECs' constitutional rights.

Parties also agree with LDDS WorldCom that the FCC should define the contents and wording of the written customer notification and authorization forms. The example set by the "Pacific Bell Awards" program -- where the RBOC's promotional campaign directed at its local service customers was used as a misleading vehicle for securing permission to access and utilize all their CPNI -- clearly demonstrates the compelling need for FCC involvement in determining the content of written notification and authorization.

Finally, many parties conclude that the enormous advantages enjoyed by the monopoly RBOCs require that the CPNI rules adopted in the Computer III proceeding should continue to apply to the RBOCs. Commenters also join LDDS WorldCom in observing that local service customer CPNI should be entitled to additional protective requirements because of the unique and valuable nature of that data, as well as the fact that those customers never voluntarily entered into relationships with the ILECs. In particular, LDDS WorldCom agrees with AirTouch's proposal to allow competitive IXCs and CMRS providers some degree of flexibility in dealing with their customers, while requiring the monopoly ILECs to always acquire written authorization before utilizing the CPNI of their local service customers.

**TABLE OF CONTENTS**

	<b><u>PAGE</u></b>
SUMMARY .....	i
I. INTRODUCTION .....	1
II. THE COMMENTS SUPPORT NATIONAL CPNI RULES DESIGNED TO PROTECT THE PRIVACY INTERESTS OF CARRIER CUSTOMERS AND THE COMPETITIVE INTERESTS OF CARRIERS .....	2
A. Most Commenters Agree That The FCC Has Plenary Jurisdiction Over CPNI Matters Under The Telecommunications Act .....	2
B. On A Short-Term Basis, Parties Do Not Oppose The FCC's Proposed Definition of The Term "Telecommunications Service" As Referring To The Traditional Category Of Service From Which CPNI Has Been Derived .....	2
C. Commenters Demonstrate The Compelling Need For Prior Customer Notification And Authorization To Be In Writing .....	5
1. Customer Notification .....	5
2. Customer Authorization .....	6
D. Parties Agree That More Stringent Rules Should Apply To Dominant RBOCs .....	10
III. CONCLUSION .....	12

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**REPLY COMMENTS OF LDDS WORLDCOM**

WorldCom, Inc., d/b/a LDDS WorldCom ("LDDS WorldCom"), hereby files its comments in response to initial comments submitted concerning the Notice of Proposed Rulemaking ("Notice"), FCC 96-221, released by the Commission on May 17, 1996 in the above-referenced proceeding. Given applicable page limitations, LDDS WorldCom here will focus on only a few key issues raised in the initial comments.

**I. INTRODUCTION**

The comments uniformly show that the FCC has plenary jurisdiction to issue and enforce national CPNI rules under the new Telecommunications Act of 1996. Parties also agree generally with LDDS WorldCom that the FCC's proposed definition of "telecommunications service" as synonymous with traditional market demarcations is acceptable in the short-term. Many commenters agree with LDDS WorldCom that a rule requiring written notification to customers, and written authorization from customers, best protects the customer's privacy rights in its CPNI. Commenters also suggest a range of additional protective measures to be applied to the local service CPNI that is controlled by the dominant, incumbent local exchange carriers.

**II. THE COMMENTS SUPPORT NATIONAL CPNI RULES DESIGNED TO PROTECT THE PRIVACY INTERESTS OF CARRIER CUSTOMERS AND THE COMPETITIVE INTERESTS OF CARRIERS**

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**A. Most Commenters Agree That The FCC Has Plenary Jurisdiction Over CPNI Matters Under The Telecommunications Act**

Most commenters on the issue agree with LDDS WorldCom that the 1996 Act gives the FCC sole authority to adopt national CPNI rules, and to preempt state rules that are in direct conflict.<sup>1</sup> A few parties claim that the states should be given flexibility to adopt additional, stricter rules than those adopted by the FCC.<sup>2</sup> However, as LDDS WorldCom stated in its initial comments, the statute on its face does not give the states such flexibility.<sup>3</sup>

**B. On A Short-Term Basis, Parties Do Not Oppose The FCC's Proposed Definition of The Term "Telecommunications Service" As Referring To The Traditional Category Of Service From Which CPNI Has Been Derived**

Many parties, including interexchange carriers ("IXCs"), incumbent local exchange carriers ("ILECs"), and state public service commissions, agree with the Commission's tentative conclusion that the statutory term "telecommunications service" should be defined along the traditional market lines that delineate between local and interexchange services.<sup>4</sup> However,

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<sup>1</sup> MCI Comments at 12-15; SBC Comments at 20; Bell Atlantic Comments at 10; NYNEX Comments at 18; MFS Comments at 11; AirTouch Comments at 2 n.1; Arch Communications Comments at 2-5; Frontier Comments at 12.

<sup>2</sup> Sprint Comments at 2; California PUC Comments at 5; Pennsylvania OCA Comments at 6; CFA Comments at 3.

<sup>3</sup> LDDS WorldCom Comments at 5-6.

<sup>4</sup> MCI Comments at 3-4; Sprint Comments at 3; CompTel Comments at 6; TRA Comments at 15; Frontier Comments at 4; Excel Comments at 3; Ameritech Comments at 3; BellSouth Comments at 5; NYNEX Comments at 8; Pacific Bell Comments at 3; GTE Comments at 11-12; California PUC Comments at 7; Washington UTC Comments at 4;

this approach is deemed by some commenters, including LDDS WorldCom, to be somewhat problematic in the long-term as these regulatorily-maintained market distinctions begin to erode and gradually disappear.<sup>5</sup> As a result, parties agree with LDDS WorldCom that the Commission should reexamine and refine its definition at regular intervals in the future.<sup>6</sup> Sprint believes that these market distinctions likely will disappear once the ILECs lose their market power.<sup>7</sup> GTE also suggests that the definition could be altered in specific instances when and if the Commission has granted an ILEC's Section 10 forbearance petition.<sup>8</sup> LDDS WorldCom agrees with both of these observations.

NYNEX alone quibbles about one aspect of the Commission's definition, arguing that intraLATA, or "short-haul," toll service should only be in the local basket because such traffic has been viewed as "traditionally" local in nature.<sup>9</sup> NYNEX overlooks the fact that, over the past several years, an increasing number of states have been opening up the intraLATA toll market to competition, thus eliminating its "traditionally" local nature. Moreover, the 1996 Act also encourages broad-based competition in the intraLATA toll market by requiring the RBOCs

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AirTouch Comments at 2; Alarm Industry Communications Committee Comments at 9; PageNet Comments at 2; SBT Comments at 1; CFA Comments at 4-5.

<sup>5</sup> Sprint Comments at 3; CompTel Comments at 6; USTA Comments at 3; BellSouth Comments at 5; ALLTEL Comments at 4.

<sup>6</sup> LDDS WorldCom Comments at 8; CompTel Comments at 6; Pacific Bell Comments at 3; Washington UTC Comments at 5; CFA Comments at 4-5.

<sup>7</sup> Sprint Comments at 3.

<sup>8</sup> GTE Comments at 11-12.

<sup>9</sup> NYNEX Comments at 9-11.

to offer intraLATA toll dialing parity as a condition of interLATA entry.<sup>10</sup> Thus, the Commission should adopt its proposed definition intact, and ignore NYNEX's belated attempt to freeze the state of the intraLATA toll market in the past.

Only a few parties insist that the term "telecommunications service" should be construed much more broadly to include any and all basic telecommunications services, or integrated service "packages."<sup>11</sup> For example, US West chastises the FCC for adopting an "unduly conservative approach to interpreting Section 222," and urges a far broader reading instead.<sup>12</sup> However, LDDS WorldCom and other parties point out that US West's proposed definition is based on an overly broad, incorrect reading of the statute.<sup>13</sup> At the other extreme, one solitary party claims that the FCC's view itself is too broad, and that the term refers only to a single telecommunications service.<sup>14</sup> CompTel successfully refutes this flawed interpretation.<sup>15</sup> The most reasonable definition is somewhere in the middle of these two extremes, where the FCC's "traditional markets" analysis is acceptable for now.

A few parties seek clarification of several related issues. For example, MCI asks the FCC to rule that the ILECs cannot provide local service CPNI to their long distance affiliates

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<sup>10</sup> 1996 Act, Section 271(e)(2).

<sup>11</sup> AT&T Comments at 6; USTA Comments at 4; BellSouth Comments at 7-10; SBC Comments at 6.

<sup>12</sup> US West Comments at 1, 4.

<sup>13</sup> LDDS WorldCom Comments at 7; CompTel Comments at 4; Alarm Industry Communications Committee Comments at 9.

<sup>14</sup> Texas PUC Comments at 7.

<sup>15</sup> CompTel Comments at 5.

without prior customer authorization.<sup>16</sup> MCI also argues that ILECs who act as billing agents for IXCs cannot be allowed to access that CPNI for their own unrelated use.<sup>17</sup> TRA insists that carriers cannot be allowed to use CPNI disclosed by their reseller customers except for the narrow purpose of providing telecommunications services to those customers.<sup>18</sup> Finally, several commenters ask the FCC to clarify that a customer name, address, and telephone number is not CPNI when a carrier seeks to use it for marketing purposes.<sup>19</sup> LDDS WorldCom agrees with each of these positions because, if adopted, they would further the overriding statutory goal of protecting the CPNI of customers from misuse.

**C. Commenters Demonstrate The Compelling Need For Prior Customer Notification And Authorization To Be In Writing**

**1. Customer Notification**

Most commenters agree that advanced written notification to customers is absolutely necessary.<sup>20</sup> These parties argue that verbal notice could be confusing or misleading to many consumers (especially residential consumers), and would inevitably lead to disputes. As LDDS WorldCom pointed out in its initial comments, a federal right to protect CPNI is

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<sup>16</sup> MCI Comments at 5-6.

<sup>17</sup> MCI Comments at 6.

<sup>18</sup> TRA Comments at 9.

<sup>19</sup> Sprint Comments at 8; Frontier Comments at 5-6.

<sup>20</sup> Sprint Comments at 3; Cable & Wireless Comments at 5; Frontier Comments at 6; Excel Comments at 4; SBC Comments at 10-12; Cincinnati Bell Comments at 8; NARUC Comments at 3; California PUC Comments at 9; Washington UTC Comments at 5-9; Texas PUC Comments at 11-12; MFS Comments at 11-12; ITAA Comments at 5-6; CFA Comments at 6.

meaningless if the consumer is never given adequate notice of its existence. Some parties argue that carriers should be allowed to choose verbal notification at their sole discretion,<sup>21</sup> but LDDS WorldCom sees no benefit, and tremendous costs, from adopting a verbal notification scheme. Those parties favoring verbal notification fail to demonstrate its superiority over written notification as a means of consumer protection.

LDDS WorldCom believes that the Commission's written notification requirement should include annual mailings to customers. While most parties do not resist an annual mailing proposal, Bell Atlantic criticizes annual mailings because customers supposedly find them "annoying."<sup>22</sup> LDDS WorldCom submits that customers would be far more annoyed if an ILEC such as Bell Atlantic sought to utilize their CPNI without a complete written explanation of the customers' federal privacy rights, and the resulting consequences of surrendering those rights.

## **2. Customer Authorization**

Many commenters also join LDDS WorldCom in asserting that a customer's approval of a carrier's request to use its CPNI for any purpose must be in writing.<sup>23</sup> Commenters explain that, as in the case of customer notification, a written authorization greatly reduces the ambiguity of verbal conversations, and ensures that the customer has indeed

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<sup>21</sup> AT&T Comments at 14-16; MCI Comments at 8-10; TRA Comments at 16; BellSouth Comments at 16; NYNEX Comments at 14

<sup>22</sup> Bell Atlantic Comments at 9.

<sup>23</sup> LDDS WorldCom Comments at 10-11; CompTel Comments at 6; TRA Comments at 16; Cable & Wireless Comments at 8; Excel Comments at 5; California PUC Comments at 5; Washington UTC Comments at 5-9; Texas PUC Comments at 9-10; MFS Comments at 11-12; ITAA Comments at 5-6; CompuServe Comments at 5-6; CFA Comments at 5-6.

voluntarily ceded access to its CPNI. Indeed, written approval appears to be the only way that consumers can sign away their privacy interests in an informed fashion. Anything less will only lead to endless confusion of consumers, and abuse by unscrupulous carriers. Moreover, those ILECs and others who argue for oral approval ignore the fact that Section 222 was intended primarily to protect the CPNI rights of consumers. not expand opportunities for carriers to misuse their customers' CPNI without permission.<sup>24</sup>

Some ILECs argue that so-called "implied," "passive," "inferred," or "tacit" customer authorization (also called a negative "opt-out") would be acceptable under the Act.<sup>25</sup> Ameritech labels it a customer's "informed acquiescence in, or non-response to," a written notification by a carrier.<sup>26</sup> This tacit approval, and the need for ILECs alone to enjoy the broad use of this CPNI, is said to spring from the pre-existing business relationships that have been established between an ILEC and its customers.<sup>27</sup> As SBC puts it (apparently with a straight face), these relationships were formed through "voluntarily conducted business" with ILECs.<sup>28</sup> US West adds that the ILECs' customers don't suffer from "privacy angst," and, in any event, "individuals have no material privacy concerns within the context of an existing

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<sup>24</sup> See, e.g., Pacific Bell Comments at 5-7; US West Comments at 17.

<sup>25</sup> AT&T Comments at 14; USTA Comments at 5, 9; Ameritech Comments at 8-9; Pacific Bell Comments at 7; SBC Comments at 10-12; US West Comments at 6; GTE Comments at 6; Cincinnati Bell Comments at 8; ALLTEL Comments at 5.

<sup>26</sup> Ameritech Comments at 9.

<sup>27</sup> Bell Atlantic Comments at 7-9; BellSouth Comments at 2; NYNEX Comments at 16; Pacific Bell Comments at 9; US West Comments at 16; GTE Comments at 7-8; Cincinnati Bell Comments at 4.

<sup>28</sup> SBC Comments at 8-9.

business relationship."<sup>29</sup> In contrast to the implied consent proposal, USTA argues that an affirmative written approval requirement would hold the ILEC "hostage to the whims of customers' behavior," and diminish CPNI's "value and total economic use" to the ILEC.<sup>30</sup>

LDDS WorldCom submits that the ILECs' "implied consent" proposal should be rejected as merely an ill-disguised attempt to separate a consumer from his or her CPNI with as little effort as possible by the ILECs. Despite the ILECs' breezy assertions about their captive customers' eagerness to surrender access to their CPNI for whatever purposes the ILECs desire, the statute plainly requires that a consumer's CPNI cannot be used for unrelated purposes except "with the approval of the customer.. ." The presumption embedded in this provision is that CPNI cannot be accessed until the carrier can demonstrate that the customer indeed has given his or her "approval." A negative option -- which interprets anything short of "No," including a customer's silence, as an affirmative -- would not appear to meet this statutory standard. As the Washington UTC puts it so well, "the loss of a consumer's privacy should not occur by default, by virtue of a failure to take affirmative action to assert the right."<sup>31</sup>

Some ILECs also throw around lofty and ominous arguments that stringent CPNI rules could infringe on their First Amendment right of free speech, and could constitute unlawful takings of property in violation of the Fifth Amendment.<sup>32</sup> These ILECs repeatedly refer to

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<sup>29</sup> US West Comments at 5, 16.

<sup>30</sup> USTA Comments at 5, 6.

<sup>31</sup> Washington UTC Comments at 7.

<sup>32</sup> USTA Comments at 7-8; US West Comments at 19; GTE Comments at 12-16.

CPNI as their "asset" and their "intellectual property."<sup>33</sup> By definition, however, the right to determine the ultimate uses of CPNI belongs to the customer, not to the carrier. The very purpose of Section 222 is to protect the customer's proprietary network information so that unscrupulous carriers cannot misuse it. LDDS WorldCom fails to see how protecting the consumers' rightful interests in their own CPNI has anything to do with the constitutional rights of the ILECs.<sup>34</sup>

Parties also agree with LDDS WorldCom that the FCC should define the contents and wording of the written customer notification and authorization forms,<sup>35</sup> either alone or with the input of the states.<sup>36</sup> While some parties argue that the Commission should not be involved in establishing the actual content of the notice,<sup>37</sup> AirTouch's comments provide a wonderful example of why the ILECs in particular cannot be trusted to devise a fair and understandable notice and authorization program for their captive customers.<sup>38</sup> In the controversial "Pacific Bell Awards" program, the RBOC presented its local exchange customers with four glossy pages of numerous prizes they could win, along with a tiny, barely-legible signature box that purports

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<sup>33</sup> See, e.g., USTA Comments at 7-8.

<sup>34</sup> Should the Commission -- incorrectly -- decide to allow verbal authorization, LDDS WorldCom agrees with one party which asserts that stringent verification procedures must be required similar to those now used under the FCC's slamming rules. See California PUC Comments at 12.

<sup>35</sup> AT&T Comments at 15; Cable & Wireless Comments at 7; Alarm Industry Communications Committee Comments at 11 n.21; ITAA Comments at 6-8.

<sup>36</sup> California PUC Comments at 9-10.

<sup>37</sup> MCI Comments at 11; Sprint Comments at 4-5; BellSouth Comments at 17-18; NYNEX Comments at 14; Pacific Bell Comments at 12; US West Comments at 18.

<sup>38</sup> AirTouch Comments at 9-10.

to authorize Pacific Bell and all its affiliates to utilize that customer's CPNI -- including long distance CPNI -- for any purpose. This particular program is but one example of the lengths to which a carrier will go to mislead its customers in order to gain unfettered access to their CPNI. No better arguments can be made for FCC involvement in determining the content of written notification and authorization.

Finally, Ameritech makes the bizarre claim that, because it has already obtained what it views as valid customer approvals for unlimited use of their CPNI, the FCC should not make its CPNI rules apply to Ameritech retroactively.<sup>39</sup> LDDS WorldCom strongly disagrees. If Ameritech's methodology and resulting CPNI claims do not comport fully with the requirements of the Act as interpreted by the FCC, Ameritech must go back and correct its flawed process, and equally flawed CPNI "approvals."

**D. Parties Agree That More Stringent Rules Should Apply To Dominant RBOCs**

Finally, many parties conclude that the enormous advantages enjoyed by the monopoly RBOCs means that the CPNI rules adopted in the Computer III proceeding should continue to apply to the RBOCs' enhanced and CPE services.<sup>40</sup> The RBOCs, naturally, oppose any further application of the Computer III rules,<sup>41</sup> but they fail to account for the statute's silence on the issue. By not addressing the matter at all, Congress apparently did not intend to

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<sup>39</sup> Ameritech Comments at 2.

<sup>40</sup> MCI Comments at 18; Sprint Comments at 7; TRA Comments at 17; Excel Comments at 6; Washington UTC Comments at 9; ITAA Comments at 9-10.

<sup>41</sup> USTA Comments at 6; Ameritech Comments at 14; Bell Atlantic Comments at 9-10; BellSouth Comments at 22; NYNEX Comments at 18-20; Pacific Bell Comments at 14-17; SBC Comments at 14-15; US West Comments at 20-21; GTE Comments at 16-18.

alter the continued applicability of the Computer III rules to the RBOCs.

Many commenters join LDDS WorldCom in observing that the CPNI of the ILECs' local service customers should be entitled to additional protective requirements because of the unique and valuable nature of that data, as well as the fact that those customers never voluntarily entered into relationships with the ILECs.<sup>42</sup> For example, AirTouch suggests that the Commission establish CPNI rules based on the "competitive environment of the relevant telecommunications service from which the CPNI was obtained."<sup>43</sup> Under this proposed approach, competitive IXC and CMRS providers would be allowed some degree of flexibility in dealing with their customers, while the monopoly ILECs would be required to acquire written authorization to utilize the CPNI of their local service customers, at least until the ILECs lose their local monopolies.<sup>44</sup> LDDS WorldCom agrees with this analysis, and supports the other pro-privacy and pro-competitive ILEC requirements suggested by AirTouch.<sup>45</sup> As the "Pacific Bell Awards" example shows, ILEC notification forms also should be reviewed carefully by the FCC and sent out on an annual basis.<sup>46</sup> Moreover, the ILECs must not be allowed to act in any way which could delay or impede their compliance with valid, authorized CPNI requests

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<sup>42</sup> LDDS WorldCom Comments at 4-5, 11-12; CompTel Comments at 8-9; ACTA Comments at 1-5.

<sup>43</sup> AirTouch Comments at 4.

<sup>44</sup> AirTouch Comments at 6-7. See also CompTel Comments at 10; Cable & Wireless Comments at 8; Alarm Industry Communications Committee Comments at 9-10.

<sup>45</sup> AirTouch Comments at 8-12.

<sup>46</sup> CompTel Comments at 11.

from other carriers.<sup>47</sup>

Finally, LDDS WorldCom agrees with several commenters that the ILECs must protect the CPNI of customers of Section 251(c)(3) and (c)(4) carriers, and cannot use that CPNI without written permission.<sup>48</sup> Under the Act, the local resale customer is not the ILEC's customer, but rather the competing carrier's customer. As a result, without written permission, that customer's CPNI should only be accessed by the competing carrier, not the ILEC.

### III. CONCLUSION

The Commission should act in accordance with the recommendations proposed above and in LDDS WorldCom's initial comments.

Respectfully submitted,



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<sup>47</sup> Cable & Wireless Comments at 12.

<sup>48</sup> CompTel Comments at 11; Cable & Wireless Comments at 12; Frontier Comments at 10.

## CERTIFICATE OF SERVICE

I, Cecelia Y. Johnson, hereby certify that I have this 26th day of June, 1996, sent a copy of the foregoing "Comments of LDDS WorldCom" by hand delivery, or first class mail, postage prepaid. to the following:

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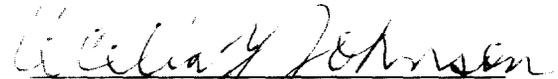
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