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

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| In the Matter of | ) | |
| | ) | |
| Implementation of the Telecommunications Act of 1996 | ) | CC Docket No. 96-115 |
| | ) | |
| Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Information | ) | |

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# GTE'S REPLY COMMENTS


GTE SERVICE CORPORATION,
on behalf of its affiliated domestic telephone operating and wireless companies

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## GTE's REPLY COMMENTS

GTE Service Corporation ("GTE"), on behalf of its affiliated domestic telephone operating and wireless companies, respectfully submits its reply comments in response to the above-captioned Notice of Proposed Rulemaking.[1] As discussed below, the opening comments confirm that competition will be enhanced, consumers well-served, and privacy protected, if the Commission adopts a flexible and even-handed set of rules regarding categories of service, customer authorization, and the release of CPNI to customer-designated parties.

## I. INTRODUCTION AND SUMMARY

To ensure that customers are offered the widest possible variety of telecommunications services on a convenient and responsive basis, the Commission should adopt flexible and forward-looking rules to implement Section 222(c). As an initial matter, the Commission should define "telecommunications service" as broadly as possible, consistent with Section 222(c)(1). A broad definition will benefit consumers by enhancing the ability of integrated service providers to offer one-stop shopping, and will protect carriers' First and Fifth Amendment rights. If the Commission is unwilling to

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[1] FCC 96-221 (released May 16, 1996) ("*NPRM*").

consider all telecommunications services as falling within a single category, it should adopt at most two categories -- local (including short-haul toll) and long distance (also including short-haul toll) -- and be receptive to requests for forbearance in light of the continuing convergence of telecommunications offerings.

In addition, the Commission should adopt GTE's "opt-in" scheme for customer notification. Under this approach, customers are informed that they have the right to restrict their CPNI at any time by informing the carrier, and that thirty days after customer notification, the carrier may assume consent to the use of CPNI as reflected in the notification. The opt-in scheme recognizes that (1) Section 222(c)(1) does not require written authorization; (2) customers expect that their carriers will be able to use their CPNI to market other services; and (3) affirmative consent, whether written or oral, is difficult to obtain for reasons unrelated to customer privacy. Adoption of this method obviates the need for the *Computer III* CPNI rules, which should be eliminated in order to avoid imposing undue and asymmetrical burdens on AT&T, GTE, and the RBOCs.

The Commission should reject claims that incumbent LECs (ILECs) must be subject to stricter CPNI rules than other carriers Requests for such disparate treatment are transparent efforts to secure an unwarranted competitive advantage. Nothing in the language of Section 222 indicates that ILECs can or should be treated differently from any other class of carrier, and the privacy considerations underlying Section 222 do not vary according to a carrier's market share

The Commission should be similarly unpersuaded by requests from the Consumer Federation of America (CFA) and others that seek to subject all carriers to unreasonably strict constraints on the use of CPNI. An overly narrow interpretation of "telecommunications service" would frustrate customer demand for one-stop shopping and impinge upon carriers' commercial speech and property rights. Likewise, the onerous notification and authorization rules suggested by these commenters are plainly

inappropriate when a customer has an ongoing business relationship with a carrier, and such rules would inhibit legitimate and beneficial contact by a carrier with its own customer.

There is also no merit to the claim that ILECs should disclose a customer's CPNI to a competitive LEC (CLEC) without affirmative written approval by the customer. Such a rule would contravene the express command of Section 222(c)(2) and would threaten to revive the unethical practices that necessitated the Commission's anti-slamming rules. GTE will, of course, provide a customer's CPNI to a CLEC upon receiving that customer's affirmative written request.

Finally, there is no need for the Commission to promulgate detailed rules to implement the subscriber list information requirements of Section 222(e). In particular, the Commission must reject requests that such information be made available at some measure of incremental cost. The statute imposes no such standard, and in fact is intended to permit ILECs to recover the full costs of compiling, maintaining, and making such information available.

## II. THE COMMISSION SHOULD ADOPT NON-DISCRIMINATORY, FLEXIBLE CPNI RULES AND SHOULD ELIMINATE THE *COMPUTER III* CPNI REQUIREMENTS.

### A. MANY PARTIES RECOMMEND CPNI RULES CONSISTENT WITH GTE'S PROPOSALS.

Flexible CPNI rules that recognize the realities of the rapidly evolving telecommunications marketplace will achieve the optimum balance between privacy interests, competitive considerations, and the ability of carriers to efficiently identify and meet the needs of their customers. These rules should be based on the general principles discussed in GTE's opening comments and described in more detail below.

First, the Commission should consider all telecommunications services to fall within a single category for purposes of Section 222. As Bell Atlantic explained, doing

so would recognize that customers expect an integrated firm to be able to offer one-stop shopping.[2] This expectation is confirmed by Cincinnati Bell, which submitted a survey showing that 47.1 percent of all customers strongly prefer a single provider for telephone services, while only 16.3 percent strongly prefer multiple providers.[3] If the Commission nonetheless believes a single category is inadvisable, it should, at most, divide telecommunications services into local and long distance categories,[4] with short-haul toll being included in both of these categories. Further, the Commission should be receptive to eliminating any categories in the near future.[5] Second, an "opt-in" approach[6] -- where carriers provide oral or written notification of CPNI rights, and customers who do not limit use of their CPNI within a set period are presumed to have authorized its use by a carrier and its affiliates -- is consistent with the statutory language, Commission precedent, and customer behavior.[7] A number of parties noted

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2 Bell Atlantic Comments at 2.

3 Cincinnati Bell Telephone Co. Comments, Appendix A.

4 U S West Comments at 12-14. GTE concurs with AT&T (at 8) that carriers should be able to use CPNI to assist in the development and marketing of enhanced services that are parts of or adjuncts to basic services. *See also* Ameritech Comments at 5 (information services and CPE should be associated with the main categories of telecommunications services to promote the advantages of one-stop shopping). Similarly, GTE agrees with MCI (at 3-5) that there should not be a separate CMRS category. As GTE explained in its opening comments, CMRS is simply an alternative means of offering local and long distance services, and separating out CMRS would unreasonably constrict the ability of carriers to offer innovative services such as GTE's Tele-Go® service.

5 BellSouth Comments at 11-12; NYNEX Comments at 11.

6 GTE's use of "opt-in" is the same as other parties' use of "opt-out" to describe the ability of a customer to inform its carrier that it wishes to restrict access of its CPNI.

7 Under GTE's approach, carriers and their affiliates could use CPNI beginning 30 days after notification, unless instructed not to do so during that period, and could continue such use unless and until a customer subsequently exercised its right to limit use.

that, because Section 222(c)(1) *does not* require affirmative written consent, while Section 222(c)(2) *does* require such consent, the Commission should conclude that Congress did not intend that carriers obtain affirmative consent prior to using the CPNI of their customers to market other services.[8] Further, as several commenters pointed out, Congress and the FCC have previously determined that, after subscribing to a carrier, customers have a lessened expectation of privacy regarding attempts by that carrier to market them new services.[9] A multitude of parties maintained that the burden of signing and mailing consent forms -- rather than seeking to protect their own privacy -- deters a great many customers from providing affirmative written consent for CPNI use.[10]

Third, the record confirms that the *Computer III* rules are no longer necessary in light of Section 222. The opt-in approach proposed by GTE and echoed by many other commenters will obviate the need for these rules. Moreover, as several parties pointed out, applying more restrictive rules to a subset of competitors would be unsound as a matter of policy, since customer privacy concerns do not vary by carrier size[11] and the costs of complying with the *Computer III* requirements would place those carriers subject to its strictures at a competitive disadvantage, contrary to the goals of the 1996 Act.[12]

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8 *See, e.g.*, Ameritech Comments at 9-10; MCI Comments at 8-9; Pacific Telesis Comments at 6.

9 Bell Atlantic Comments at 8-9; BellSouth Comments at 8-9 (citing Telephone Consumer Protection Act of 1991 and the Cable Act); NYNEX Comments at 16.

10 Pacific Telesis Comments at 6-7; Ameritech Comments at 11; AT&T Comments at 15-16; Bell Atlantic Comments at 6-7. While having the flexibility to accept consent in oral form is important to many carriers, in fact, many of the same barriers deter customers from giving oral consent.

11 BellSouth Comments at 22-25.

12 NYNEX Comments at 20-21.

## B. INFLEXIBLE, DISCRIMINATORY RULES ARE INCONSISTENT WITH BOTH SECTION 222 AND SOUND PUBLIC POLICY.

In contrast to the flexible approach recommended by GTE and most other parties, a minority of commenters urged the Commission to impose inflexible rules that would tightly constrain the use of CPNI either by ILECs,[13] or in the case of CFA and a handful of others, by all telecommunications service providers.[14] For example, commenters asked the Commission to establish exceedingly narrow categories of telecommunications services,[15] burdensome customer notification and authorization procedures,[16] and stricter safeguards on internal use of CPNI,[17] and to continue or even expand the *Computer III* CPNI rules.[18] These requests are inconsistent with the plain

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13 *E.g.*, Cable and Wireless Comments at 8 (oral approval should not be permitted for ILECs); Competitive Telecommunications Ass'n Comments at 10-11 (ILECs should be subject to more stringent CPNI requirements because they were once monopoly providers); Intelcom Group (U.S.A.) Comments at 5-6 (the FCC should apply less stringent service classification rules to CLECs than to ILECs).

14 *E.g.*, Public Utility Comm'n of Texas Comments at 6-8 (proposed definition of "telecommunications service" is far too broad); Information Technology Ass'n of America Comments at 5-6 (annual customer written notification and authorization should be required for CPNI use); Consumer Federation of America Comments at 5-7 (same).

15 *E.g.*, Information Technology Ass'n of America at 3-5 (the FCC should implement a blanket prohibition on using CPNI acquired from any non-enhanced service for marketing enhanced services).

16 *E.g.*, Compuserve Inc. Comments at 5-6 (written authorizations should be required in all circumstances under Section 222(c)(1)); Excel Telecommunications Comments at 4-5 (written notification *and* authorization should be required); Public Utilities Comm'n of the State of California at 5-6, 11-12 (same).

17 *E.g.*, America's Carrier Telecommunications Ass'n Comments at 6 (safeguards must be strengthened); Telecommunications Resellers Ass'n Comments at 10-13 (detailed safeguards for CPNI of carrier customers).

18 *E.g.*, Information Technology Ass'n Comments at 9-10 (BOCs and GTE should continue to be subject to the *Computer III* rules); MCI Comments at 19-20 (if anything, affirmative approval should be required from customers with less than 20 lines before using their CPNI to market advanced services); Public Utility Comm'n of Texas at 5-6 (notice to multiline business

language of Section 222, the purposes of the 1996 Act, and sound public policy.

Preliminarily, there is no statutory basis for imposing different and more onerous requirements on ILECs than on other carriers Section 222 does not distinguish among types of carriers; it refers only to "a telecommunications carrier." In contrast, Section 251(b) imposes certain interconnection obligations on all "local exchange carriers," while Section 251(c) imposes other, more stringent interconnection obligations on "incumbent local exchange carriers." Thus, when Congress intended to draw regulatory distinctions based on carrier class or type, it did so clearly.

Further, Section 222 is based largely on a desire to protect customers' privacy interests, which do not vary based on the size or asserted market power of the carrier. CLECs, IXCs, and ILECs have identical access to the CPNI of their customers and should be subject to identical ground rules regarding its use. Requests for differential treatment of ILECs accordingly are transparent attempts to gain an inequitable competitive advantage. Indeed, granting the relief sought by these parties would only compound the advantage that many "new" competitors (such as MCI) already enjoy The customer bases of the large IXCs are more substantial and widespread than those of any ILEC, giving them a tremendous advantage as they become competitors in the local exchange throughout the nation. As ILECs (and particularly independent telcos like GTE) move into the long distance market, in contrast, their customer base only gives them access to isolated pockets of subscribers

Even if applied uniformly to all carriers, unreasonably strict rules would diminish competition and frustrate customer expectations A narrow definition of "telecommunications service" would preclude carriers from offering one-stop shopping, which is desired by customers and, as recognized by the Commission, creates

(..continued)
customers with 2 to 20 lines must be modified to inform such customers that access to their CPNI is now restricted unless they authorize its use).

substantial consumer benefits.[19] In this regard, overly rigid CPNI rules would be the equivalent of a ban on beneficial packaging of services[20] -- representing arbitrary governmental intrusion into an existing, voluntary relationship between private parties taking corporate assets of the carrier (customer contacts and knowledge properly gained in the course of business) without compensation and denying the right of a private party to speak to another private party in an existing relationship where such other party has not indicated an unwillingness to be addressed.

Other intrusive rules are equally unwarranted.[21] Contrary to requests by CFA and certain state regulators, annual or repeated notifications and safeguards similar to those imposed to deter "slamming" are plainly unnecessary and highly burdensome.[22] Slamming-type rules were designed to respond to a major, widespread problem of unauthorized switching of customers from their chosen carrier to one they did not

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19 *See* Bell Atlantic Comments at 2; SBC Comments at 7-9; U S West Comments at 5; *see also Computer III Remand Order*, 6 FCC Rcd 7571, 7610 & n.155 (1991). Such one-stop shopping is also consistent with the pro-competitive goals of the 1996 Act, BellSouth Comments at 9-10, and the 1996 Act's attempt to "decompartmentalize" the telecommunications industry. *Id.* at 6-7.

20 Packaging increases customer choice by offering a combination of services when the services are also available separately. Packaging should be distinguished from bundling, which may diminish customer choice by compelling a customer to take the combination of services in order to obtain any individual element of the bundle.

21 GTE disagrees with the American Public Communications Council ("APCC")(at 3) that carriers must make information related to pay phones available to "independent" pay phone providers. As APCC concedes, there is no customer for LEC pay phones. Consequently, there can be no CPNI, and by definition, no aggregate CPNI. *See* Section 222(f)(2). Because carriers need disclose only (1) CPNI where disclosure is requested by the customer, and (2) aggregate CPNI when they make use of such information for purposes described in Section 222(c)(1), they are under no obligation to make pay phone-related information available to third parties.

22 *See* Public Utilities Comm'n of the State of California Comments at 11-12 (requesting that anti-slamming type safeguards be implemented if oral approval is permitted).

select. Where a customer has an ongoing relationship with a carrier, however, it generally expects that the carrier will be able to use its CPNI, and there has been no evidence of abuses that would support imposition of onerous rules. In addition, proponents of repeated notifications combined with detailed prior written authorization,[23] fail to recognize that such a requirement would unduly impinge on commercial speech by impeding carriers from using the CPNI of customers who have no objection to such use,[24] and would prevent many customers from receiving a great deal of useful information from their carriers.

Finally, retaining or expanding the *Computer III* rules is patently unnecessary. The purposes underlying those rules are fully addressed by GTE's proposed "opt-in" scheme of customer notification and authorization Moreover, in a competitive environment, market forces will discipline any carrier that refuses to respect customer privacy -- and imposing unique burdens on a subset of competitors, without a compelling need to do so, will inevitably distort competition.

## III. THE COMMISSION SHOULD CONCLUDE THAT CARRIERS MAY DISCLOSE A CUSTOMER'S CPNI ONLY ON RECEIPT OF AN AFFIRMATIVE WRITTEN REQUEST FROM THE CUSTOMER.

AT&T and MCI urge the Commission to interpret Sections 222(c)(2) and 222(d) to allow an ILEC to disclose a customer's CPNI to a CLEC that "has won the customer, even absent written customer consent."[25] These parties argue that the language of Section 222(d)(2) -- which allows the disclosure of CPNI "to initiate, render, bill, and collect for telecommunications services" -- allows ILECs to disclose a customer's CPNI

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23 Consumer Federation of America Comments at 6-7.

24 *See* Cincinnati Bell Telephone Co. Comments, Appendix A (according to customer survey data, 81.5% of CBT's customers want to be advised of services that CBT offers).

25 AT&T Comments at 18. *See also* MCI Comments at 16-17.

to CLECs under the aforementioned circumstances.

This argument is flawed, both as a matter of law and as a matter of policy. GTE stands ready to execute the congressional command of subsections 222(c)(1) and (2), which requires careful respect by all carriers for the confidential nature of CPNI. Accordingly, upon receipt of an *affirmative written request* by the customer -- mainfestly, such a "request" must be addressed to the party being asked to act, *i.e.*, GTE -- GTE will provide the CPNI to "any person designated by the customer," including a CLEC. The explicit direction of the statute reflects Congress's intent that there would not be re-created in the CPNI context another nightmare for the public, industry, and regulators such as continues to occur with respect to slamming in the long distance market. Arguments by AT&T, MCI, and others that the carrier benefitting by a change should be able simply to notify the ILEC and then receive all CPNI would (i) in the event of abuse, prejudice security of the customer's CPNI in violation of the statute, and (ii) be an open invitation to slamming.[26] Further, the exception to Section 222(c) embodied in Section 222(d)(2) applies only to the carrier that already possesses a customer's CPNI, not to a carrier that seeks such data. Any other interpretation of the Section 222(d)(2) exception would swallow the general rule of non-disclosure to third parties set forth in Section 222(c)(2).

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[26] The Commission should be extremely wary of allowing carriers the opportunity to change a customer's local exchange carrier of choice without prior written authorization. Certain interexchange carriers have proven themselves willing to play somewhat loosely with customer "authorization." *See, e.g.*, "Common Carrier Bureau Adopts Consent Decree Agreement with MCI Resolving Notice of Apparent Liability for Forfeiture for Slamming," Report No. CC 96-14 (June 21, 1996), "Commission Finds Heartline Communications Apparently Liable for Forfeiture of $200,000 for Slamming and Issues Notice of Forfeiture Against Excel for $80,000," Report No. CC 96-15 (June 21, 1996).

## IV. THERE IS NO NEED TO PROMULGATE DETAILED RULES IMPLEMENTING THE SUBSCRIBER LIST INFORMATION REQUIREMENTS.

GTE supports the comments and reply comments regarding subscriber list information ("SLI") filed by the Yellow Pages Publishers Association ("YPPA"). In particular, GTE endorses YPPA's recommendation that rules implementing Section 222(e) are not necessary because the statutory language requiring providers of telephone exchange service to make SLI available to directory publishers "on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions" is clear on its face.[27] Many parties agreed with GTE that, absent any failure of negotiated agreements, the Commission should not expend valuable resources grappling with linguistic niceties.[28]

A few commenters, however, stated that under Section 222(e), SLI must be made available at rates based on incremental cost.[29] These parties misapprehend the plain language and the legislative history of Section 222(e). First, this section imposes no requirement that rates be determined on the basis of any particular cost standard; it simply mandates that rates be "non-discriminatory and reasonable." Second, as stated in GTE's opening comments, the legislative history of Section 222(e) indicates that Congress deliberately rejected efforts to require carriers to provide SLI at incremental cost-based rates. Rather, Congress intended that carriers should be fairly compensated for the costs of compiling, maintaining, and disseminating SLI, and for its value.[30]

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27 YPPA at 2-3. GTE also agrees with YPPA (at 9), and disagrees with MCI (at 23-24), that SLI can be used only for purposes of directory publication. Such a limitation is plainly mandated by the statute.

28 *E.g.*, NYNEX Comments at 21-22; SBC Comments at 15.

29 MCI Comments at 22-23.

30 *See* Yellow Pages Publishers Ass'n Comments at 7-10.

## V. CONCLUSION

The Commission should adopt rules that allow consumers to enjoy the advantages of one-stop shopping for communications services while still protecting customer privacy. A broad definition of "telecommunications service," combined with GTE's "opt-in" plan for customer notification and approval and elimination of the *Computer III* CPNI rules would strike such a balance In addition, to comply with Section 222(c) and avoid a repeat of the sharp business practices that led to the anti-slamming rules, the Commission should require affirmative written consent before an ILEC discloses CPNI to a CLEC. Finally, because the subscriber list information requirements of Section 222(e) are clear on their face, the Commission need not promulgate rules explaining this section and should not require that such information be provided at rates based on incremental cost.

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## Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "GTE's Reply Comments" have been mailed by first class United States mail, postage prepaid, on June 26, 1996 to all parties of record.

Ann D. Berkowitz