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

JUN

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 Customer Information	

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REPLY COMMENTS
OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION
AND THE
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELEPHONE COMPANIES

The National Telephone Cooperative Association ("NTCA") and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") submit these Reply Comments in response to the comments filed on June 11, 1996, in the above captioned matter. The Commission is examining requirements for, and restrictions on, telecommunications carriers with respect to the use and distribution of customer proprietary network information ("CPNI").[1]

I. THE COMMISSION SHOULD ADOPT A BROAD DEFINITION OF TELECOMMUNICATIONS SERVICES.

Many commenting parties discuss the extent to which distinct telecommunications services should be delineated for purposes of applying CPNI guidelines. The discussion in the *NPRM* seems to embrace service distinctions that were adopted by the courts for the purpose of

[1] Notice of Proposed Rulemaking, FCC 96-221, released by the Commission on May 17, 1996, in the proceeding captioned above ("*NPRM*"). Unless otherwise indicated, citations herein refer to comments filed on June 11, 1996, in the proceeding captioned above.

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divesting the former AT&T/Bell system.[2] The market for "telecommunications services" that will develop under the terms of the new Act does not need to conform to these former arbitrary distinctions and most certainly will not. The public does not expect to have to obtain telecommunications services from different providers, nor does the public expect that their customer information will be held proprietary from what to them is already their telecommunications services provider. Congress understood the delicate balance between guarding customer's privacy, convenience of users in becoming aware of and receiving offers for new services, and competition among carriers.[3]

While the Commission in its *NPRM* and many commenting parties discuss the meaning of the language surrounding telecommunications services, the majority of commenting parties favor a broad approach to the definition. MFS recommends that "telecommunications and telecommunications services should be defined simply as they are defined in the Telecommunications Act."[4] AT&T argues in favor of a broad construction in that it would "comport[] with the statutory definition."[5] SBC Communications argues that the Commission is suggesting "an overly narrow interpretation of the statute ... based on inconsistent reasoning."[6] SBC goes on to observe that the suggestion that CPNI be confined to "particular" telecommunications services does "not strike the appropriate balance between privacy,

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[2] Certainly, CMRS is not a separate service, but a different technological method to deliver the same services. *NPRM* at para. 22. The distinction of services should not be confused by technology type.

[3] USTA at 2.

[4] MFS at 4.

[5] AT&T at 6.

[6] SBC at 5.

competitive and customer concerns that would be achieved by a broader, more balanced, interpretation."[7]

With this in mind, NTCA and OPASTCO agree with those commenting parties that argue in favor of a wider approach to the delineation of "telecommunications services" for the purpose of confining carriers and the marketplace.[8] Distinctions in what may now appear to be separately identifiable telecommunications services will disappear or become blurred over time.[9] GTE offers a reasonable approach in suggesting that "[i]f the Commission nonetheless believes that the statute anticipates some initial division of services into separate baskets, GTE would support the temporary establishment of local (including short-haul toll) and long distance categories."[10] The Commission should be prepared, however, to eliminate even this initial division as the marketplace changes.

II. THE COMMISSION SHOULD MINIMIZE REQUIREMENTS FOR WRITTEN AUTHORIZATIONS

Written authorization from customers allowing carriers to share or divulge CPNI should only be required where the statute expressly states. Written authorization should be confined to situations where information is to be disseminated to third parties.[11] Carriers will use their own

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[7] *Id.*

[8] *See, e.g.*, ALLTEL at 3.

[9] *See, e.g.*, Sprint at 3.

[10] GTE at 11. GTE also notes examples of where service distinctions are likely to be blurred including CMRS providers' offering of fixed local loop service, interexchange carriers moving into the local exchange market, and local exchange carriers' entry onto long distance. "As carriers integrate their service offerings, the variety of services proliferates, and competition in the local and long distance markets intensifies, unwarranted restrictions on information flow will increasingly harm both carriers and customers." *Id.*

[11] *See* ALLTEL at 5; USTA at 5-6; MCI at 8; BellSouth at 18-20; and Sprint at 5.

management discretion to decide whether written authorization is required elsewhere.

III. THE BURDENS ON SMALL CARRIERS SHOULD BE MINIMIZED.

The Commission should confine itself in this rulemaking to defining those concepts necessary to implement the CPNI aspects of the Act. There is no need for the Commission to adopt rules which extend the congressional intent as stated in the statute. This proceeding should serve only to provide guidance with respect to compliance with the law.[12] The Commission should be careful not to prejudge this balance or to adopt prematurely provisions which could turn out to be counterproductive or needlessly burdensome to carriers, their customers, or both.

With respect to the burdens associated with implementing and maintaining any potential protections of CPNI and other provisions proposed in this proceeding, the Commission should be guided by its previous decisions in *Computer II* and *Computer III* proceedings concluding that CPNI rules need not be applied to smaller LECs.[13] In this case, they need not be applied to smaller telecommunications carriers, at least to the same degree, if at all, as applied to the largest market dominant carriers.[14]

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[12] ALLTEL at 2.

[13] Accordingly, NTCA and OPASTCO strongly oppose MCI's suggestion that the Computer III CPNI requirements be extended to smaller incumbent carriers. MCI at iii.

[14] USTA at 3.

IV. CONCLUSION

Consistent with the discussion above, the Commission should adopt a broad definition of telecommunications service consistent with the marketplace and the expectations of users. Requirements for written authorization should be confined to those specific instances where the Act requires it. Finally, the requirements and guidelines for CPNI should be structured in a manner that minimizes the burdens on smaller telecommunications carriers.

Respectfully submitted,

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I, Gail C. Malloy, certify that a copy of the foregoing Reply Comments of the National Telephone Cooperative Association and the Organization for the Promotion and Advancement of Small Telephone Companies in CC Docket No. 96-115 was served on this 26th day of June 1996, by first-class. U.S. Mail, postage prepaid, to the following persons on the attached service list:

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