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

In The Matter of )  
)  
Implementation of the )  
Telecommunications Act of 1996: )  
)  
Telecommunications Carriers' Use )  
of Customer Proprietary )  
Network Information; )  
Use of Data Regarding Alarm Monitoring )  
Service Providers )  
)

CC Docket No. 96-115

REPORT AND ORDER

Adopted: August 6, 1996

Released: August 7, 1996

By the Commission:

I. INTRODUCTION

1. On May 17, 1996, the Commission released a Notice of Proposed Rulemaking<sup>1</sup> regarding certain customer information provisions in the Telecommunications Act of 1996.<sup>2</sup> In addition to addressing the customer proprietary network information (CPNI) and subscriber list information provisions set out in Section 222, the Notice also sought comment regarding how to implement the restrictions on use of alarm monitoring data set out in Section 275(d).<sup>3</sup> Section 275(d) provides that "[a] local exchange carrier may not record or use in any fashion the

<sup>1</sup> Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, FCC 96-221 (rel. May 17, 1996) (NPRM or Notice).

<sup>2</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. §§ 151 et seq. (the 1996 Act). The 1996 Act amended the Communications Act of 1934 (the 1934 Act). The sections cited in this Report and Order are sections of the 1934 Act, as amended.

<sup>3</sup> The Commission has initiated a separate proceeding that seeks, inter alia, to clarify and implement certain other provisions of Section 275. See Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services, CC Docket No. 96-152, Notice of Proposed Rulemaking, FCC 96-310, (rel. July 18, 1996).

occurrence or contents of calls received by providers of alarm monitoring services for the purposes of marketing such services on behalf of such local exchange carrier, or any other entity."<sup>4</sup> Section 275(d) further provides that "[a]ny regulations necessary to enforce this subsection shall be issued initially within 6 months after the date of enactment of the Telecommunications Act of 1996."<sup>5</sup>

2. In the Notice, we tentatively concluded that, for the purpose of the Section 275(d) ban, a customer's authorization for a carrier to gain access to its CPNI under Section 222(c)(1) does not extend to any records concerning the occurrence of calls received by alarm monitoring service providers.<sup>6</sup> We noted that call content information is not considered CPNI, but that, pursuant to Section 275(d), local exchange carriers (LECs) may not record or use information about the content of calls received by alarm monitoring service providers in connection with marketing such services.<sup>7</sup> We sought comment on what procedures LECs should develop to comply with Section 275(d).<sup>8</sup> We also sought comment regarding the Commission's jurisdiction over intrastate aspects of alarm monitoring data.<sup>9</sup>

3. In this order, we affirm our tentative conclusion that customer authorization to obtain access to CPNI pursuant to Section 222(c)(1) does not extend to any CPNI subject to the Section 275(d) ban. We conclude, however, that no regulations are necessary at this time to implement or enforce Section 275(d). We intend to address the other issues raised in the Notice in a subsequent order in this proceeding.

## II. PLEADINGS

4. More than 50 parties submitted comments or reply comments in response to the Notice.<sup>10</sup> Of these, eight parties addressed Section 275(d), some only in passing.<sup>11</sup> Parties

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<sup>4</sup> 47 U.S.C. § 275(d).

<sup>5</sup> Id.

<sup>6</sup> Notice at ¶ 47.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id. at ¶ 18.

<sup>10</sup> See Appendix A for a list of commenting parties.

<sup>11</sup> AICC Comments at 5-7; AICC Reply at 3-6; Ameritech Comments at 20-21; BellSouth Comments at 2, n.5; CaPUC Comments at 4-5, 7-8; Comptel Comments at 8; Excel Comments at 2-3; MCI Comments at 24-25; SBC Comments at 19.

characterize Section 275(d) as a flat prohibition on the use of information regarding the occurrence or contents of calls to alarm monitoring service providers for any marketing purpose,<sup>12</sup> and several describe the provision as self-executing and self-explanatory.<sup>13</sup> Other parties describe the obligations imposed by Section 275(d) as independent of, and in addition to, those imposed by Section 222.<sup>14</sup> A number of the commenters agree with the Commission's tentative conclusion that a customer's authorization to obtain access to CPNI under Section 222(c)(1) does not extend to information concerning the occurrence of calls received by alarm monitoring service providers.<sup>15</sup> MCI states that data subject to the Section 275(d) prohibition may not ever be used or disclosed by LECs, even if the alarm monitoring service provider appeared to approve such disclosure.<sup>16</sup>

5. A number of the commenters state that the Commission does not need to promulgate regulations to enforce Section 275(d).<sup>17</sup> Ameritech argues that LECs already have adequate procedures in place to guard against misuse of information concerning the occurrence or contents of calls made or received by all LEC customers, not just alarm monitoring service providers.<sup>18</sup> With respect to Section 275(d)'s application to call content, Ameritech argues that there are already criminal sanctions against carrier disclosure of the contents of interstate communications, so that further efforts or procedures to enforce Section 275(d) are unnecessary.<sup>19</sup> SBC argues that the costs of complying with specific regulations would outweigh the benefits, given that only a small percentage of alarm monitoring customers are identifiable as such to the LEC.<sup>20</sup>

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<sup>12</sup> See, e.g., AICC Comments at 5; AICC Reply at 3; CaPUC Comments at 4-5.

<sup>13</sup> AICC Comments at 6; BellSouth Comments at 2, n.5.

<sup>14</sup> Comptel Comments at 8; AICC Comments at 5-6.

<sup>15</sup> AICC Comments at 5-6; AICC Reply at 3; Ameritech Comments at 21; MCI Comments at 25; SBC Comments at 19.

<sup>16</sup> MCI Comments at 25.

<sup>17</sup> Ameritech Comments at 20-21; BellSouth Comments at 2, n.5; MCI Comments at 25; SBC Comments at 19.

<sup>18</sup> Ameritech Comments at 20. Ameritech concurs with our conclusion that call content information does not constitute CPNI. See also Notice at ¶ 47.

<sup>19</sup> Ameritech Comments at 21 (citing the Electronic Communications Privacy Act of 1986, 18 U.S.C. §§ 2510-2520, 2701-2709); see also MCI Comments at 25.

<sup>20</sup> SBC Comments at 19. SBC states that a LEC can only identify as alarm monitoring service customers those that subscribe to an alarm circuit, but that these customers comprise less than 3% of the total number of existing monitored alarm services. SBC further asserts that at least 25% of residential alarm systems are not monitored (in other words, these systems are not connected to the public switched network), and that the vast

6. Two parties addressed the jurisdiction issue raised in the Notice, regarding whether the data safeguards provisions of Section 275(d) or the CPNI provisions of Section 222 by themselves give the Commission jurisdiction over both interstate and intrastate use and protection of customer information. Excel believes that those sections do confer upon the Commission jurisdiction over both interstate and intrastate use of CPNI and similar information.<sup>21</sup> CaPUC disagrees, and argues that neither the 1996 Act itself nor the Joint Explanatory Statement support an interpretation that Section 275(d) or Section 222 confer upon the Commission jurisdiction over intrastate aspects of customer information.<sup>22</sup>

7. Of the parties that commented on Section 275(d), only one, AICC, argued that the Commission should adopt specific regulations. AICC states that it represents the majority of the alarm security services in the United States, and that its members are dependent on LECs for essential services in order to provide their alarm monitoring services.<sup>23</sup> AICC asserts that there are several ways in which a LEC could use information it receives through its provision of local services to target alarm monitoring customers, including: 1) identifying users of private line alarm circuits or derived local channel services; 2) canvassing subscribers' outbound call records to identify calls to alarm providers' central stations; or 3) capturing customer telephone numbers from records of the incoming calls received by an alarm provider.<sup>24</sup> AICC contests SBC's claim that most alarm monitoring customers are "unknown" to the serving LEC, stating that LECs that are aware of the telephone numbers of alarm monitoring central stations could easily identify the subscribers making calls to such numbers.<sup>25</sup>

8. AICC argues that the Commission should adopt several rules to implement Section 275(d). First, AICC urges the Commission to adopt a rule which essentially restates the statutory ban set forth in Section 275(d).<sup>26</sup> Second, AICC advocates a rule specifying that customer approval of access to CPNI does not authorize carriers to obtain access to data covered

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as such by a LEC.

<sup>21</sup> Excel Comments at 2-3.

<sup>22</sup> CaPUC Comments at 7-8.

<sup>23</sup> AICC Comments at 2. AICC states that typical monitored alarm systems use either private lines, derived channel technology, or calls placed over the public switched network -- all of which are generally supplied by a LEC -- in order to transmit information from a customer's premises to the alarm monitoring provider's facilities. AICC Comments at 3-4; AICC Reply at 2.

<sup>24</sup> AICC Comments at 2-3; AICC Reply at 2.

<sup>25</sup> AICC Reply at 4.

<sup>26</sup> Specifically, AICC proposes that we adopt a rule that states, "A LEC may not record or use in any fashion data concerning the occurrence or contents of calls received by a provider of alarm monitoring services for the purpose of marketing alarm monitoring services, whether its own services, an affiliate's services, or those of any other entity." AICC Reply at 4 and Attachment A.

by Section 275(d).<sup>27</sup> Third, AICC recommends a rule requiring LECs to deny access to CPNI to LEC personnel (or personnel of a LEC affiliate) with responsibility for the marketing of alarm monitoring services, because CPNI may contain information covered by Section 275(d).<sup>28</sup> Fourth, AICC argues that the Commission should adopt expedited procedures for complaints alleging violations of Section 275(d), similar to the expedited procedures for complaints alleging violations of Section 275(b) that the Commission is required to establish pursuant to Section 275(c).<sup>29</sup> In support of this argument, AICC asserts that Section 275(d) violations involve the same competitive concerns as Section 275(b) violations and may cause immediate and irreparable harm to alarm monitoring service providers.<sup>30</sup>

### III. DISCUSSION

9. After review of the comments and replies received in this proceeding, we affirm the tentative conclusions regarding Section 275(d) that we set out in the Notice. Thus, we conclude that Section 275(d) restricts LEC personnel from using information regarding "the occurrence or content of calls received by providers of alarm monitoring services" for the purpose of marketing their own alarm monitoring service, or an alarm monitoring service offered by another affiliated or unaffiliated entity. Information on the occurrence of such calls may constitute CPNI, if it is made available to the LEC solely by virtue of the customer-carrier relationship. We affirm our tentative conclusion that, even if a carrier has received customer authorization to obtain access to CPNI pursuant to Section 222(c)(1), such authorization does not extend to any CPNI subject to the Section 275(d) ban, namely information concerning the occurrence of calls received by alarm monitoring service providers used for marketing purposes. We note that four parties have specifically concurred with this conclusion, and no parties have expressed disagreement with it.

10. Based on the record, we conclude that no regulations are necessary at this time to implement or enforce Section 275(d). Specifically, we decline to adopt any of the four rules

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<sup>27</sup> AICC Comments at 6; AICC Reply at 4 and Attachment A.

<sup>28</sup> AICC Comments at 6-7; AICC Reply at 4-5 and Attachment A.

<sup>29</sup> AICC Comments at 7; AICC Reply at 5. Section 275(b) provides that incumbent LECs engaged in the provision of alarm monitoring services shall provide network services to nonaffiliated entities on nondiscriminatory terms and conditions, and shall not directly or indirectly subsidize their alarm monitoring services from telephone exchange service operations. Section 275(c) requires the Commission to establish procedures for expedited consideration of complaints concerning violations of Section 275(b) or the regulations thereunder that result in material financial harm to an alarm monitoring service provider.

<sup>30</sup> AICC Comments at 7.

proposed by AICC.<sup>31</sup> The first such rule is a paraphrase of the prohibition set out in Section 275(d). We conclude that codification of the statutory prohibition in such a rule is unnecessary because the statutory prohibition is clear on its face.<sup>32</sup> The second proposed rule, specifying that customer approval of access to CPNI does not authorize carriers to obtain access to data covered by Section 275(d), merely restates an interpretation of the statute that we set forth as a tentative conclusion in the Notice, and that we affirm in this order. We do not see the need to codify this interpretation in the form of an additional rule.

11. The third rule proposed by AICC would require LECs to deny access to all CPNI to personnel with responsibility for the marketing of alarm monitoring services, because the CPNI may contain information covered by Section 275(d). We decline to adopt this proposed rule. While AICC's proposed rule sets forth one method by which LECs may ensure that they are in compliance with Section 275(d), there may be less burdensome methods of ensuring compliance with the statute. Further, AICC's proposed rule would extend beyond the statutory prohibitions of Section 275(d). Section 275(d) only restricts use of information (i.e., CPNI) related to the occurrence of calls received by alarm monitoring service providers for the purpose of marketing such services. AICC's proposed rule, however, would prevent LEC (or LEC affiliate) alarm monitoring marketing personnel from obtaining access to all CPNI for any purpose. Section 222 sets forth limitations on the ability of telecommunications carriers, their affiliates, and unaffiliated parties to obtain access to CPNI, and we conclude that it is not necessary to bar completely certain of these entities from access to CPNI simply because they engage in marketing alarm monitoring services. Moreover, we conclude that it is more appropriate to examine whether any restrictions on access to CPNI are necessary to effectuate the Section 275(d) prohibition at the same time we examine whether to impose specific safeguards to protect against unauthorized disclosure of restricted CPNI. Thus, we leave this determination to our subsequent order in this proceeding.

12. Finally, we decline in this order to adopt expedited procedures for complaints alleging violations of Section 275(d), as suggested by AICC. We expect to adopt expedited procedures for complaints concerning violations of Section 275(b), as required pursuant to Section 275(c), in a separate proceeding. There is no similar statutory mandate to adopt expedited procedures to enforce Section 275(d). Moreover, we note that the statute only mandates expedited review of Section 275(b) complaints "that result in material financial harm

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<sup>31</sup> See *supra* ¶ 8.

<sup>32</sup> We note that in Section 701(a)(2) of the 1996 Act, Congress specifically directed the Commission to adopt regulations that conform to statutory provisions. See Policy and Rules Governing Interstate Pay-Per-Call and Telephone Disclosure and Dispute Resolution Act, CC Docket Nos. 96-146 and 93-22, Order and Notice of Proposed Rulemaking, FCC 96-289 (rel. July 11, 1996). There is no such specific congressional direction in Section 275(d).

to a provider of alarm monitoring service,"<sup>33</sup> whereas AICC proposes expedited review for all Section 275(d) complaints. We find no basis in the 1996 Act for adopting expedited procedures specific to Section 275(d) complaints.

13. In addition, we decline to address any issues raised by parties related to the scope of our authority over intrastate alarm monitoring data, in light of our decision not to adopt any regulations to enforce Section 275(d). We note that parties who have commented upon the authority conferred on us by Section 275(d) have done so in conjunction with their analyses of the authority conferred on us by Section 222. We conclude that it would be more appropriate to address all issues relating to the scope of our authority with respect to customer information in our subsequent order in this proceeding.

#### IV. PROCEDURAL ISSUES

##### A. Regulatory Flexibility Analysis

14. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), an Initial Regulatory Flexibility Analysis was incorporated in the NPRM in this proceeding. The Commission sought written public comments on the proposals in the NPRM, including the Initial Regulatory Flexibility Analysis. Because the Commission is not adopting any regulations at this time to enforce Section 275(d) of the 1996 Act, no further Regulatory Flexibility Analysis is required at this time.

##### B. Paperwork Reduction Act

15. As required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, the NPRM in this proceeding sought comment from the general public and the Office of Management and Budget regarding the information collections contained in the NPRM. Because the Commission is not adopting any regulations to enforce Section 275(d) of the 1996 Act, no further Paperwork Reduction analysis is required at this time.

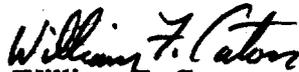
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<sup>33</sup> 47 U.S.C. § 275(c).

**V. ORDERING CLAUSE**

16. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4, and 275 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, and 275, the REPORT AND ORDER is hereby ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary

**APPENDIX A****Comments**

1. AirTouch Communications Inc. (AirTouch)
2. Alarm Industry Communications Committee (AICC)
3. ALLTEL Telephone Services Corporation (ALLTEL)
4. American Public Communications Council (APCC)
5. America's Carrier's Telecommunication Association (ACTA)
6. Ameritech
7. Arch Communications Group, Inc. (Arch)
8. Association of Directory Publishers (ADP)
9. AT&T Corp. (AT&T)
10. Bell Atlantic
11. BellSouth Corp. (BellSouth)
12. Cable & Wireless, Inc. (CWI)
13. California Public Utility Commission (CaPUC)
14. Cincinnati Bell Telephone Company (CBT)
15. Competitive Telecommunications Association (CompTel)
16. CompuServe Incorporated (CompuServe)
17. Consumer Federation of America (CFA)
18. Excel Telecommunications, Inc. (Excel)
19. Frontier Corp. (Frontier)
20. GTE Service Corporation (GTE)
21. Information Technology Association of America (ITAA)
22. Intelcom Group (U.S.A.), Inc. (ICG)
23. LDDS WorldCom
24. MCI Telecommunications Corp. (MCI)
25. MFS Communications Company, Inc. (MFS)
26. National Association of Regulatory Utility Commissioners (NARUC)
27. New York State Assemblyman Anthony J. Genovesi
28. NYNEX Telephone Companies (NYNEX)
29. Pacific Telesis Group (Pacific)
30. Paging Network, Inc. (PageNet)
31. Pennsylvania Office of the Consumer Advocate (PaOCA)
32. Personal Communications Industry Association (PCIA)
33. SBC Communications Inc. (SBC)
34. Small Business in Telecommunications, Inc. (SBT)
35. Sprint Corporation (Sprint)
36. Telecommunications Resellers Association(TRA)
37. Teleport Communications Group Inc. (TCG)
38. Texas Public Utility Commission (TexPUC)

39. United States Telephone Association (USTA)
40. U S WEST, Inc. (U S WEST)
41. Virgin Islands Telephone Corporation (Vitelco)
42. Washington Utilities Transportation Commission (WUTC)
43. Yellow Pages Publishers Association (YPPA)

### Reply Comments

1. Ad Hoc Telecommunications Users Committee, The California Bankers Clearing House Association, The New York Clearing House Association, and the Security Industries Association (Ad Hoc)
2. ALLTEL
3. AICC
4. Ameritech
5. Arch
6. ADP
7. AT&T
8. Bell Atlantic
9. BellSouth
10. CaPUC
11. Competition Policy Institute (CPI)
12. CompTel
13. Computer Professionals for Social Responsibility (CPSR)
14. Direct Marketing Association (DMA)
15. Equifax, Inc. (Equifax)
16. GTE
17. Information Industry Association (IIA)
18. ITAA
19. Intermedia Communications Inc. (ICI)
20. LDDS WorldCom
21. MCI
22. MobileMedia Communications, Inc. (MobileMedia)
23. National Telephone Cooperative Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies (NCTA/OPASTCO)
24. NYNEX
25. Pacific
26. SBC
27. Sprint
28. TRA
29. USTA
30. US WEST

- 31. Wireless Technology Research (WTR)
- 32. YPPA