ATSI

ASSOCIATION OF TELEMESSAGING
SERVICES INTERNATIONAL, INC.

1200 19TH STREET, N.W.
WASHINGTON, D.C. 20036-2412
(202) 429-5151
FAX (202) 223-4579

RECEIVED

AUG 2 6 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

August 26, 1996

Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Comments, CC Docket No. 96-115

Dear Mr. Caton:

Enclosed for late filing please find an original and eleven copies of Comments of the Association of Telemessaging Services International (ATSI) in the proceedings, FCC 96-221, CC Docket No. 96-115. Additional copies have been delivered to Janice Myles of the Common Carrier Bureau and the International Transcription Services, and to Radhika Karmarkar, Blaise Sciento, Jeannie Su and Bill Kehoe of the Common Carrier Bureau.

Sincerely,

Herta Tucker

Herta Tucker
Executive Vice President

cc: International Transcription Services, Inc.
2100 M Street, N.W., Suite 140

Janice Myles (1 copy plus diskette)
Common Carrier Bureau
1919 M Street, N.W., Room 544

No. of Copies rec'd 0+10
List ABCDE

RECEIVED

AUG 2 6 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

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	)	

DOCKET FILE COPY ORIGINAL

Comments of the Association of
Telemessaging Services International

ASSOCIATION OF TELEMESSAGING
SERVICES INTERNATIONAL (ATSI)

Frank Moore
Smith, Bucklin & Associates, Inc.
Government Affairs Division
1200 19th Street, N.W.
Washington, D.C. 20036
(202) 429-5100

Its Regulatory Counsel

Herta Tucker
Executive Vice President
Association of Telemessaging Services International
1200 19th Street, N.W.
Washington, D.C. 20036
(202) 429-5151

Outline of Comments

I. The CPNI custodian should not enjoy an inherent competitive advantage over Enhanced Service Providers in the marketing or provision of enhanced telecommunications services. NPRM Paragraphs 15 and 20-26.

II. The combined application of existing Computer III rules and those promulgated in this proceeding must safeguard against unfair, anticompetitive advantages in favor of the CPNI custodian. NPRM Paragraphs 38-42.

III. The custodian must provide ESPs with prompt and ongoing access to CPNI once a written authorization form has been provided. NPRM Paragraphs 27-34.

A. The Commission should develop mechanisms to eliminate bottlenecks.

B. The Commission should develop mechanisms for resolving disputes and addressing patterns of practice of delay or denial.

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

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	)	

Comments of the Association of
Telemessaging Services International

The Association of Telemessaging Services International (ATSI) represents Enhanced Service Providers (ESPs) who offer, first and foremost, live, "person-to-person" answering services to the telephony customer. ATSI also represents ESPs who offer automated telemessaging services. Telemessagers provide opportunities for call completion for their customers and offer options of voice messaging services, paging activation, as well as over-the-phone order taking and information exchange. Because these services are also offered by incumbent local exchange carriers, as well as by other telecommunications carriers who will have custody of CPNI (all hereafter referred to as "CPNI custodians"), ATSI files these comments urging the Commission to develop rules consistent with the Telecommunications Act of 1996 (Act) that : 1) provide prompt access to CPNI by ESPs once an appropriate request is made to the CPNI custodian; and 2) prohibit the unfair and anti-competitive use of CPNI by the custodian itself.

Comments

I. The CPNI custodian should not enjoy an inherent competitive advantage over Enhanced Service Providers in the marketing or provision of enhanced telecommunications services. NPRM Paragraphs 15 and 20-26.

ATSI agrees with the first tentative conclusion that regulations would be in the public interest. Regulations adopted by the Commission in this proceeding should weigh the competitive positions realized by CPNI custodians (by virtue of their custody of CPNI) and ESPs (by virtue of their need to access CPNI) and bring into balance these two positions with respect to the use of CPNI for purposes of serving the needs of current and prospective users of enhanced telecommunications services. ATSI has pointed out in the Interconnection and Non-Accounting Safeguards proceedings as well that the Commission should focus on outcomes in the marketplace in the development of regulations implementing the Act and create pathways that provide the means for participants like ESPs to achieve those desired outcomes[1].

The Commission should adopt a definition for "telecommunications service" that places the CPNI custodian and ESPs at the same competitive position when offering competing telecommunications services. For example, because telemessagers must submit to the incumbent (as the CPNI custodian) a written authorization from the customer to gain access to that customer's CPNI, the incumbent and any affiliate should be subject to the same rules regarding authorization and use.

---

[1] See ATSI's Comments and Reply Comments filed in the Interconnection Proceeding (CC Docket No. 96-98) and ATSI's Comments filed in the Non-Accounting Safeguards Proceeding (CC Docket No. 96-149).

ATSI would suggest that the Commission's statement that "CPNI obtained from the provision of any telecommunications service may not be used to market information services" includes telemessaging. *See* CPNI NPRM, Paragraph 26. Specifically, the incumbent should not have, by virtue of its custody of CPNI, an unfair, anticompetitive advantage through the use of CPNI to market enhanced telecommunications services to its customers. In all instances, the Commission should confirm that its rules do not and will not create a "custodian's privilege" for incumbents and others to the competitive disadvantage of ESPs.

II. The combined application of existing Computer III rules and those promulgated in this proceeding must safeguard against unfair, anticompetitive advantages in favor of the CPNI custodian. NPRM Paragraphs 38-42.

ATSI agrees that Computer III requirements may continue to apply to the extent they are not superseded by the Act; however, to conform to the Act's pro-competitive goals, the Commission should equalize the competitive positions of CPNI custodians and ESPs regarding the marketing and provision of enhanced telecommunications services. Nothing in the Act should result in or have the practical affect or outcome of relaxing prior regulatory efforts to "prohibit ... carriers from using CPNI obtained from their provision of basic regulated services to gain an anticompetitive advantage in the unregulated CPE and enhanced services markets". *See* CPNI NPRM, Paragraph 40. Changing CPNI rules that give custodians a marketplace advantage in terms of marketing enhanced services or responding to customer inquiries about new or existing services would have an anticompetitive impact on ESPs and erode the safeguards that should be retained.

III. The custodian must provide ESPs with prompt and ongoing access to CPNI once a written authorization form has been provided. NPRM Paragraphs 27-34.

Enhanced Service Providers like telemessagers must respond to customer or prospective customer inquiries regarding the provision of enhanced telecommunications services immediately in order to remain competitive. Just as the incumbent's ownership of the network allows it to delay responding to requests for interconnection and thereby interfering with legitimate business needs of the ESP, custody of CPNI allows the incumbent to bottleneck requests by ESPs seeking CPNI in response to customer needs, thereby interfering with the legitimate expectations of the customer and the ESP alike.

Given customer expectations that an ESP should be able to answer questions regarding service offerings and options and the fact that the ESP is able to answer those inquiries only when in possession of the appropriate CPNI, the custodian should be required to make the CPNI available within the same time frame it would were the request made by the customer regarding the custodian's own enhanced services or by an affiliate of the custodian where such an affiliate request is allowable. Nevertheless, this time frame should not exceed one business day upon receipt of an appropriate written authorization form.

A. The Commission should develop mechanisms to eliminate bottlenecks.

Telemessagers respond to customer inquiries by providing a written authorization form to the customer. The customer reviews and signs the form and returns it to the telemessager who submits it to the incumbent's CPNI coordinator. Once the CPNI coordinator approves the authorization, the telemessager must then contact and communicate with the incumbent's appropriate marketing personnel for access to the specific CPNI sought. This requires the

availability of an informed individual employed by the incumbent to respond to questions from the telemessager.

There are at least three bottlenecks experienced by telemessagers when attempting to access CPNI:

1. Securing the customer's signature. Telephony customers are generally more reluctant to sign forms submitted by telecommunications service providers than they are to sign forms submitted by the incumbent. Therefore, the information contained within and the format required for an acceptable authorization form should not favor the incumbent or disadvantage the ESP.

2. Delivering authorization to the custodian. The incumbent telephone company may choose not to accept the authorization form submitted by the ESP or respond to the submission on a timely basis. Therefore, the Commission should consider a format for use by ESPs that the incumbent must honor. Attached to these comments is a suggested CPNI authorization form that should provide ESPs with immediate approval by the CPNI coordinator. The Commission should consider the adoption of this form to eliminate any questions regarding the appropriateness of authorization forms used by ESPs for purposes of accessing CPNI.

   Also, The CPNI coordinator is often not readily available and is not necessarily located in the vicinity of the requesting ESP. Therefore, the Commission should authorize the use of facsimile delivery of the authorization form and create the same "virtual contact" that exists between the various departments of the incumbent as well as with its affiliates.

3. Accessing the CPNI on a timely basis. Once the CPNI coordinator has approved the release of the CPNI sought, the requesting ESP must make contact with the incumbent's marketing personnel who are well enough informed to discuss the details required by the ESP. Therefore, the Commission should also consider the following dual certification process: 1) the ESP may pre-certify its form with the custodian to be used for all CPNI requests so that, at any point in time that the form is submitted to the custodian, it will not require a case-by-case review; and 2) a signed and approved CPNI authorization may be placed on file with the incumbent's marketing personnel so that once a specific customer's CPNI authorization is approved by the CPNI coordinator, the ESP may communicate directly with the marketing personnel for all future inquiries until that authorization is withdrawn.

The custodian must make CPNI available immediately and the appropriately informed personnel must be easily accessible. Getting recordings and having calls returned one or two days after a request is submitted is unacceptable. The Commission should seek outcomes that once a signed authorization form is presented to the custodian, the requesting ESP may gain access to the information required immediately thereafter, but no later than one business day upon receipt of the request.

Once written authorization is secured, the ESP should be able to "stand in the shoes of the customer" and discuss CPNI details with the custodian. The ESP should be able to ask for any information the customer would be authorized to ask for or that the incumbent itself would have access to with the proper authorization.

B. The Commission should develop mechanisms for resolving disputes and addressing patterns of practice of delay or denial.

If prompt access to CPNI does not occur, the ESP's ability to respond to the needs of the telephony customer is significantly damaged. ATSI urges the Commission to create an appropriate mechanism to immediately address any dispute involving a CPNI request. While establishing time requirements for responding to requests and certification processes for CPNI forms, there will be instances where requests are denied or access is delayed and an immediate resolution between the custodian and the ESP is not likely. In each and every such instance, the requesting ESP is unable to meet the expectations of the telephony customer, and the inability to access the required CPNI undermines the ESP's ability to competitively perform and demonstrate its capabilities in the marketplace.

ATSI further urges the Commission to recognize the need to address patterns of practice on the part of the custodian involving the denial of access or the delay in responding to requests for access from ESPs. The resolution of disputes that arise from this behavior on the part of the custodian could take place within a time frame that is less demanding than that for actual CPNI requests; however, all delays create anticompetitive results for ESPs, and unresolved patterns represent ongoing marketplace disadvantages for ESPs.

The resolution of disputes should also take advantage of any certification process described above to eliminate the possibility of any such practices recurring, and remedies should be applicable to all CPNI requests.

Section 260 of the Act would be an applicable mechanism to address disputes involving this pattern of delay or denial involving CPNI requests. Because the behavior complained of would

represent unsuccessful requests for access to CPNI through the use of written authorization forms, the Commission should anticipate using the 60-day time period in ordering the CPNI custodian to cease in the pattern of denial and delay pending final determination.

Conclusion

Enhanced Service Providers like telemessagers must have prompt access to CPNI in order to competitively respond to customer inquiries and to service customers' existing and future needs. Requests should be allowed by facsimile and authorization forms should be certifiable to avoid unnecessary delay. The ESP, with proper authorization, should stand in the shoes of the customer and be able to request all information the customer would be allowed to request and that the custodian itself would have access to with proper authorization.

Custodians should provide ESPs with access to CPNI immediately upon presentation of a signed authorization form, and in no case later than one business day after the request has been made. Authorization forms should be pre-certifiable and placed on file with the CPNI coordinator so that each time the ESP presents an authorization form as a formal request for access, the custodian need only determine that it conforms with the pre-certified form on file with the custodian. Actual authorization forms should be certifiable and placed on file with the custodian's marketing personnel so that the process of communicating first with the CPNI coordinator need not be repeated.

Mechanisms should be in place to resolve specific instances of delay or denial. Mechanisms should also be in place to address patterns of practice of delay or denial on the part of a custodian or custodians and resolution of these and other disputes should be structured so as to avoid future practices found to be inappropriate.

Respectfully submitted,

ASSOCIATION OF TELEMESSAGING
SERVICES INTERNATIONAL (ATSI)

By: _____

Frank Moore
Smith, Bucklin & Associates, Inc.
Government Affairs Division
1200 19th Street, N.W.
Washington, D.C. 20036
(202) 429-5100

Its Regulatory Counsel

Herta Tucker
Executive Vice President
Association of Telemessaging Services International
1200 19th Street, N.W.
Washington, D.C. 20036
(202) 429-5151

APPENDIX

Incumbent Local Exchange Carrier
CPNI Coordinator
Street Address
City, State, Zip
Telephone and Fax Number

Date: _____

Customer Proprietary Network Information

☐ Release the customer service records of the undersigned to:

Enhanced Service Provider
Street Address
City, State, Zip

Telephone Number

☐ In addition, release telephone bill of the undersigned to Enhanced Service Provider upon their request.

☐ In addition, Enhanced Service Provider has been retained to order and handle negotiations for the installation of network services and equipment and coordinate the installation of telephone equipment and systems. This includes arranging for disconnects, rearrangements or transfers of service and equipment as appropriate.

☐ All recurring and non-recurring charges made by Incumbent Local Exchange Carrier for service orders on our behalf will be paid by the undersigned directly and are not the responsibility of Enhanced Service Provider.

☐ The undersigned will not hold Enhanced Service Provider responsible for any delays on the part of Incumbent Local Exchange Carrier in providing the services and equipment by the specified or requested date. Please notify Enhanced Service Provider if any jeopardy situations occur.

☐ This authorization shall remain in effect until canceled by the undersigned in writing. It does not preclude the ability of the undersigned to act in its own behalf when it deems it necessary.

☐ I authorize Incumbent Local Exchange Carrier to honor the above request(s):

Company Name _____

Individual Name _____

Signature _____

Telephone Number(s) _____