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

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In the Matters of	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185
Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas	)	NSD File No. 96-8
Administration of the North American Numbering Plan	)	CC Docket No. 92-237
Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois	)	IAD File No. 94-102

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CONSOLIDATED RESPONSE OF THE
UNITED STATES TELEPHONE ASSOCIATION

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November 20, 1996

SUMMARY

USTA opposes several of the petitions for reconsideration or clarification of the *Second Report and Order* in the interconnection proceeding, and supports others.

The Commission should deny requests to require incumbent LECs to implement permanent number portability as a precondition to the adoption of an all-services overlay plan. Such petitions fail to recognize that the growing markets that will first need area code relief will also be the markets where permanent number portability first will be deployed. As both the 1996 Act and the Commission recognize, interim number portability effectively protects competition. Because permanent number portability is still being developed, a blanket rule requiring its deployment prior to the adoption of an overlay plan needlessly would deny states flexibility to address area code exhaust situations.

USTA opposes petitions to increase the number of NXX codes that are required to be available in an NPA to authorized telecommunications carriers 90 days in advance of the implementation of an all-services overlay. USTA not only opposes increasing the number of NXXs required to be available, but also urges the Commission to eliminate the 90-day requirement. The rule, both in its current form and in the petitioners' expanded version, will lead to inefficient mandated warehousing of NXX codes that will harm new entrants. USTA instead proposes that numbering administrators, with state oversight, should assign at least one NXX in the existing NPA to each authorized carrier prior to implementation of an all-services overlay, on a first-come, first-served basis.

USTA also opposes requests for the Commission to shorten its schedule for non-BOC LECs' implementation of toll dialing parity -- specifically, that Tier 1, non-BOC LECs be required to implement toll dialing parity by January 1, 1997. The Commission has

clear authority under the 1996 Act to establish a reasonable implementation schedule. The current schedule itself is likely to be insufficient for many LECs.

Some petitioners seek sweeping actions by the Commission to determine the future development of numbering in the United States, requesting, for example, Commission assignment of one or more NPAs for each of the 51 MTA wireless service areas, and the use of 11-digit addresses. USTA opposes these proposals, which ignore the role of neutral industry bodies in addressing such issues.

The Commission should deny petitions seeking it to rule that paging is telephone exchange service as defined in the 1996 Act. As USTA demonstrated in opposing similar petitions for reconsideration of the *First Report and Order* in this proceeding, paging service does not satisfy the statutory definition and is not comparable to two-way, switched voice service.

The *Second Report and Order* concluded that, to the extent that LEC operator services or directory assistance services use "adjuncts" that are not telecommunications services, LECs must provide access to such adjuncts on a nondiscriminatory basis. This rule should be reconsidered to the extent it requires LECs to violate third parties' intellectual property rights associated with such adjuncts, which may include software licensed from third parties.

Finally, USTA opposes a proposed "clarification" of the Commission's finding that read-only access to LEC directory assistance databases satisfies the requirement for nondiscriminatory access. Instead, the Commission should clarify that nondiscriminatory access to directory assistance databases does not include the transfer of such databases to new entrants. The Commission also should not require incumbent LECs to provide access to

information on unlisted customers. The 1996 defines "subscriber list information" to include only information regarding listed subscribers and published information, and the Commission correctly precluded access to such information.

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CONSOLIDATED RESPONSE OF THE
UNITED STATES TELEPHONE ASSOCIATION

I. INTRODUCTION

The United States Telephone Association ("USTA") hereby respectfully submits this consolidated response to certain petitions for reconsideration and clarification of the *Second Report and Order* adopted by the Commission in the above-captioned docket.[1] USTA is concerned that several petitions ask the Commission to alter some of the provisions of the

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[1] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, FCC 96-333 (rel. Aug. 8, 1996) ("*Second Order*"). USTA filed a petition for reconsideration of the *Second Order* on October 7, 1996 ("USTA petition").

Second Order that most benefit the public. USTA, whose members are more than 1300 incumbent local exchange carriers ("LECs"), believes that by denying such petitions, the Commission will best implement the statutory framework crafted by Congress in the Telecommunications Act of 1996 ("1996 Act").[2] USTA also requests the Commission to grant its petition in this proceeding, and supports adoption of other petitions as described below.

II. THE COMMISSION SHOULD DENY CERTAIN PETITIONS FOR RECONSIDERATION AND CLARIFICATION AND GRANT OTHERS

A. Implementation Of Permanent Number Portability Should Not Be A Precondition To An All-Services Overlay Plan

In the *Second Order*, the Commission expressly declined to impose permanent number portability as a precondition to the adoption of an all-services overlay plan.[3] Several petitioners now ask the Commission to reconsider its decision.[4] USTA opposes these requests for reconsideration. Incumbent LECs should not be required to implement permanent number portability as a precondition to an all-services overlay plan.

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[2] Pub. L. No. 104-104, 110 Stat. 56 (Feb. 8, 1996), *to be codified* at 47 U.S.C. § 151 *et seq.*

[3] *See Second Order* at ¶ 290.

[4] *See, e.g.*, AT&T Corp. ("AT&T") Petition at 8-9; MFS Communications Company, Inc. ("MFS") Petition at 2-10; Teleport Communications Group Inc. ("Teleport") Petition at 8-11; Cox Communications, Inc. ("Cox") Petition at 3-7. Unless otherwise specified, the petitions referred to herein are those filed on or about October 7, 1996, in the captioned proceeding.

Petitioners unjustifiably claim that interim numbering portability is inadequate to protect against the alleged anticompetitive effects of overlays.[5] Assuming *arguendo* that such effects exist, which is not the case, interim numbering portability is more than adequate to address them. As a practical matter, the numbering plan areas ("NPAs") that will first reach a state of exhaust -- those where the growth in demand for numbers is most explosive -- are the areas where permanent numbering portability will first be implemented.

Moreover, Congress and the Commission have properly found that the use of interim number portability helps promote competition, in other contexts as well as in addressing area code exhaust. For example, a Bell Operating Company ("BOC") can satisfy Section 271's competitive checklist if, among other things, it provides "interim telecommunications number portability" until permanent number portability is deployed.[6] The 1996 Act thus views the availability of interim number portability as one of several reliable indicia of competition at the local exchange level. If interim portability were as ineffective in protecting competition as petitioners insist, then certainly Congress would not have included it in the competitive checklist. The Commission likewise rightly has concluded that interim number portability helps promote competition, particularly in the context of area code overlays.[7]

Contrary to petitioners' claims and as the Commission noted in the *Second Order*, overlays in many instances have substantial advantages over geographic splits.[8] Overlays,

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[5] *See, e.g.*, Cox Petition at 6 ("number portability will not sufficiently mitigate the anticompetitive effects of area code overlays").

[6] *See* 47 U.S.C. § 271(c)(2)(B)(xi).

[7] *See Second Order* at ¶ 290.

[8] *See, e.g.*, MFS Petition on at 3 ("[o]verlays are harmful to competition, consumers, and plainly not in the public interest"); Cox Petition at 6.

for example, enable existing customers to retain their telephone numbers. Although advanced planning is required, overlays can be implemented relatively quickly, which is particularly important to address emergency exhaust situations. Such situations can be expected to become more common as competition increases. Overlays, unlike geographic splits, ensure complete coverage of an NPA.[9]

Because the deployment of permanent number portability has yet to occur, a blanket rule requiring its imposition may unnecessarily prevent a state from adopting an overlay plan. Implementation of permanent number portability is still in its infancy. The 1996 Act recognizes as much by obligating LECs to provide number portability only "to the extent technically feasible."[10] Moreover, the Commission concluded in its *Number Portability Order*[11] that "long-term number portability requires the use of one or more databases" that "have yet to be deployed."[12] In light of such factors, rather than immediately requiring

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[9] *See Second Order* at ¶ 283. Although some oppositions complain of potential inconveniences to customers under an overlay regime, any means of addressing area code exhaustion could inconvenience some consumers. But that is inevitable "during the transition to a competitive marketplace." *Second Order* at ¶ 283. Any such burdens to consumers will be transitory, and incumbent LECs will work diligently to minimize them.

[10] *See* 47 U.S.C. § 251(b)(2).

[11] *See Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, FCC 96-286 (rel. July 2, 1996) ("*Number Portability Order*").

[12] *Number Portability Order* at ¶ 81.

permanent number portability[13] on a nationwide basis, the Commission adopted a phased-in deployment schedule.[14]

A blanket rule against using overlays in the absence of permanent number portability would also deny the states the flexibility they need in dealing with area code relief. Ultimately, as the Commission observed, it is the states that are "uniquely situated to determine what type of area code relief is best suited to local circumstances."[15] For the brief period of time when states may opt for overlays prior to deployment of permanent number portability, end users should be allowed to keep their telephone numbers when they change carriers, "under the Commission's mandate of interim number portability."[16]

B. The Commission Should Not Increase The Number of NXXs Per Service Territory To Be Assigned To Authorized Carriers

USTA opposes petitions urging the Commission increase the number of NXXs available to authorized telecommunications carriers in each service area as a precondition to

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[13] USTA assumes that "permanent number portability" is synonymous with the Commission's phrase "long-term number portability."

[14] According to the Commission's deployment schedule, all LECs operating in the 100 largest MSAs must provide long-term service provider portability by December 31, 1998. *Number Portability Order* at ¶ 77. LECs operating in the remaining smaller MSAs will have to make permanent number portability available within six months of a request by another telecommunications carrier. Such carriers may begin filing requests after January 1, 1999. *Id.* at ¶ 80. The Commission stated that this schedule allows "a reasonable amount of time to install the appropriate generic and application software in the relevant switches," *id.*, and "takes [into] account the differing levels of local exchange competition that are likely to emerge in the different geographic areas throughout the country," *id.* at ¶ 82.

[15] *See Second Order* at ¶ 283.

[16] *See Second Order* at ¶ 290 (citing the *Number Portability Order*).

implementation of an all-services overlay.[17] Such petitions argue generally that the current rule -- that at least one such NXX be available to authorized carriers at least 90 days prior to introducing the overlay -- should be changed so that additional NXXs are made available to authorized carriers in each affected service area.

As USTA has demonstrated in this reconsideration proceeding, the current 90-day requirement should be removed altogether.[18] No aspect of it should be expanded. AT&T attempts to rationalize its proposed expansion of the 90-day rule's NXX requirements by claiming that the Commission's decision appears to be based on a misconception of industry standards.[19] The Commission deserves more credit than that in declining to require authorized carriers to receive multiple NXXs. However, a process far superior to the current 90-day rule is readily available. As USTA stated in its petition, so long as NXXs are available in an existing NPA, numbering administrators, with state oversight, should assign at least one NXX in the existing NPA to each authorized carrier prior to implementation of an all-services overlay. Such assignments should take place on a first-come, first-served basis, not pursuant to the current 90-day limit. The first-come, first-served model satisfies the requirements of Section 251(b)(3) of the 1996 Act better than either the current 90-day rule or the expanded rule requested by petitioners.[20] Indeed, expansion of the current rule so that authorized carriers each would receive multiple NXXs at least 90 days before introducing an overlay would exacerbate the unfair, anticompetitive, and impractical aspects

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[17] *See, e.g.*, AT&T Petition at 5-7; Teleport Petition at 4-7.

[18] *See* USTA Petition at 9-11.

[19] *See* AT&T Petition at 6-7.

[20] *See* Teleport Petition at 6-7.

of the current rule that USTA discussed in its petition. In essence, the 90-day rule in its present form requires inefficient "warehousing" of NXX codes on speculative grounds.

If more NXXs had to be reserved for prospective, yet-to-be authorized carriers under the 90-day requirement, as parties request, competition would suffer. Indeed, the carriers that would be most hurt by such a rule would be less established, newly authorized carriers, which would not be able to use numbers reserved for other, not-yet authorized carriers until after the date 90 days before the introduction of the overlay.[21] In areas where code availability reaches "exhaust status," mandatory warehousing of multiple codes in an effort to meet the 90-day requirement will particularly aggravate these shortages.[22]

In granting USTA's request that the 90-day requirement be eliminated, the Commission thus should deny others' anticompetitive attempts to require multiple NXXs to be available to authorized carriers in each NPA. Doing so would prevent additional inefficient use of scarce and valuable resources. Instead, the Commission should allow code administrators and the industry to work to ensure prompt, fair, and efficient code reform.[23]

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[21] Because state commissions typically adopt NPA relief plans at least one year, and in some cases two years or more, before implementation, the 90-day rule in any form will impede competitively neutral area code reform. It will force code administrators and industry participants tasked with managing area code relief to attempt to predict the number of NXXs that must be set aside for an unknown number of undeclared or yet-to-be-authorized carriers that may require NXXs 90 days prior to the implementation of an overlay.

[22] As noted in the USTA petition, in areas where NXXs are exhausted, unless warehousing as described above occurs, the 90-day requirement also permits almost perpetual invalidations of any overlay plans. Any single new carrier would be able to "veto" an overlay plan by requesting a NXX in the existing NPA 90 days prior to implementation. *See* USTA Petition at 9-11.

[23] Moreover, the Commission should discount AT&T's and Teleport's overstatements regarding the undesirability of providing service using a new area code. Any customer inconvenience will be short-lived given that the new area code will soon become recognizable. *See Second Order* at ¶ 288 n.614.

C. The Commission Should Not Shorten Its Toll Dialing Parity Implementation Schedule for Non-BOC LECs

AT&T argues on reconsideration that Section 251(b)(3) imposes a mandate on non-BOC LECs to implement toll dialing parity immediately, and that the Commission erred in deferring implementation.[24] USTA disagrees with AT&T's hyper-literal reading of Section 251(b)(3), and urges the Commission not to shorten its toll dialing parity implementation schedule.

Briefly, the Commission in the *Second Order* established that non-BOC LECs must provide intraLATA and interLATA toll dialing parity by February 8, 1999, or on the date they begin providing in-region, interLATA or in-region, interstate toll services, whichever is earlier. Non-BOC LECs that begin offering such services before August 8, 1997, must begin offering intraLATA and interLATA toll dialing parity on that date.[25]

AT&T claims on reconsideration that the implementation schedule for dialing parity for non-BOC LECs is contrary to the Act and finds no support in the record. The thrust of AT&T's argument apparently is that, for all non-BOC LECs, Section 251(b)(3)'s mandate to implement toll dialing parity attached unconditionally on the date of enactment, and that those LECs that have not implemented toll dialing parity are in violation of the Act. The only exception to this mandate, according to AT&T, relates to the BOCs' implementation schedule under Section 271(e).

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[24] AT&T Petition at 2-5.

[25] *Second Order* at ¶ 62.

AT&T's reading of Section 251(b)(3) is specious. It overlooks the fact that Section 251 also affords the Commission *six months* to "complete all actions necessary to establish regulations to implement the requirements" of that section.[26] Congress thus intended that rules implementing duties and obligations under Section 251 would require at least six months of Commission proceedings beyond the date of enactment. Moreover, the 1996 Act does not state when implementation must be completed. Thus, the Commission has ample discretion to establish an implementation plan for toll dialing parity.

AT&T itself recognizes that some transition is necessary. The logic of AT&T's fallacious argument is that non-BOC LECs that have failed to implement toll dialing parity are in violation of the 1996 Act, and have been so since the date of enactment. Yet in the same breath, AT&T recommends to the Commission that "except as provided in [section] 271(e)(2)(B), all Tier I LECs must implement dialing parity using the full 2-PIC method by January 1, 1997."[27] AT&T thus recognizes the need for a transition. Its difference with the Commission now appears to be over the duration of that period.

Indeed, USTA has noted small incumbent LECs' need for the grace period established by the Commission.[28] The short period that the Commission has allowed for implementation of dialing parity are likely to be insufficient for many LECs. If a LEC that already offers interLATA services must replace more than a very limited number of central office switches to meet this requirement, the one year period allowed by the *Second Order* is

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[26] *See* 47 U.S.C. § 251(d)(1).

[27] AT&T Petition at 5.

[28] *See* USTA Petition at 12. USTA has also asked that the Commission clarify that states have only limited ability to accelerate the implementation schedule for dialing parity. *Id.*

far too short. The Commission is well aware that between nine months and two years are required from the date of ordering such switches to the completion of installation.[29] When many switches must be replaced -- dozens or even hundreds for a single company -- it becomes impossible to accomplish such a task within the Commission's implementation schedule. This is not simply because of the cost, which itself is large, but also because of the practical operational and scheduling issues associated with any project of that magnitude. USTA urges the Commission to deny AT&T's request on reconsideration for a shorter implementation schedule.

D. Industry, Not The Commission, Should Plan Further Development Of Numbering In The United States

Rather than seek reconsideration of specific issues decided in the *Second Order*, some parties pursue even more sweeping actions by the Commission to determine the future of numbering in the United States. For example, Omnipoint Communications, Inc. ("Omnipoint"), a wireless provider, requests that the Commission assign "one or more NPAs for each of the 51 MTA [Major Trading Area] license service areas."[30] Likewise, the New York State Department of Public Service ("NYDPS") requests the Commission to consider "additional number relief options," including the use of 11-digit addresses.[31]

These petitions should be denied. By calling for immediate Commission intervention

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[29] *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report And Order, CC Docket Nos. 96-98, 95-185, FCC 96-325, at ¶ 411 (rel. Aug. 8, 1996) ("*First Order*").

[30] *See* Omnipoint Petition at 6-17.

[31] *See* NYDPS Petition at 10-12.

on these significant matters, petitioners completely ignore the role of neutral industry bodies in addressing such issues. USTA strongly recommends that the Commission permit the Industry Numbering Committee ("INC"), which includes members from all sectors of the telecommunications industry, to consider these and other global changes to the North American Numbering Plan ("NANP"), with participation from the North American Numbering Council when appropriate. In fact, the NANP Expansion workshop at INC is currently analyzing alternatives for NANP expansion and plans to circulate recommendations to the industry for review and comment. Such bodies should be permitted to analyze these far-ranging proposals and to present their recommendations, if any, to the Commission.

E. Paging Companies Do Not Provide Telephone Exchange Service

Consistent with its holding in the *First Order* in this proceeding,[32] the Commission in the *Second Order* correctly concluded that "[p]aging is not 'telephone exchange service' within the meaning of the Act."[33] Parties claim on reconsideration that the Commission's conclusion is erroneous.[34] These parties raised an identical claim in their petitions for reconsideration of the *First Order*. USTA opposed this claim in that reconsideration proceeding and restates its opposition here, incorporating its prior analysis by reference.[35] Notwithstanding petitioners' misguided urging to the contrary, paging services patently do

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[32] *See First Order* at ¶¶ 1005, 1013.

[33] *Second Order* at ¶ 333 n.700.

[34] *See* AirTouch Paging and PowerPage ("AirTouch") Petition at 3, 7-14; Paging Network, Inc. ("PageNet") Petition at 7-11.

[35] *See Consolidated Opposition of the United States Telephone Association,* CC Docket Nos. 96-98, 95-185, at 35-37 (filed Oct. 31, 1996).

not fall within the 1996 Act's definition of "telephone exchange service." Paging service is not comparable to two-way, switched voice service.

F. Incumbent LECs Cannot Be Required To Violate The Intellectual Property Rights Of Third Parties In Providing Nondiscriminatory Access To Operator Services And Directory Assistance

The Commission in the *Second Order* concluded that, to the extent that LEC operator services or directory assistance services use "adjuncts" that are not "telecommunications services" as defined in the 1996 Act, then LECs must provide nondiscriminatory access to those adjuncts pursuant to Section 251(b)(3).[36] USTA supports the petition for reconsideration of SBC Communications Inc. ("SBC") that challenges this conclusion to the extent it requires LECs to violate third parties' intellectual property rights.

As SBC has noted, in many cases, LECs provide operator- and directory assistance-related services by deploying software licensed from third parties.[37] A LEC has the right to use that software, but it typically cannot transfer or sublicense the software. The *Second Order*, however, apparently would require LECs to do just that in violation of third party licensors' intellectual property rights. USTA joins SBC in urging the Commission to reconsider its broad holding on this issue.

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[36] *See* Second Order at ¶¶ 13-14.

[37] SBC Petition at 11-14.

G. The Commission Should Not Adopt Excell's Proposed "Clarifications" Of Its Treatment Of Access To Directory Assistance Services And Subscriber Lists

USTA opposes the request of Excell Agent Services, Inc. ("Excell") that the Commission "clarify" its finding that read-only access to LEC directory assistance databases satisfies the requirement for nondiscriminatory access.[38] As an initial matter, under Section 251(b)(3), LECs have a duty to provide nondiscriminatory access to directory assistance to "competing providers of telephone exchange service and telephone toll service."[39] Because Excell is not such a provider, LECs' duties under Section 251(b)(3) do not apply to Excell. Excell describes itself as a provider of "independent directory assistance services for long distance carriers and other telecommunications providers."[40] As such, Excell's service does not satisfy the definition of either telephone exchange service or telephone toll service in the Communications Act of 1934, as amended.[41] In the event that the Commission chooses to consider Excell's arguments, however, USTA believes that they should be denied.

Excell contends that while "allowing competing providers to obtain read-only access to the LECs' databases theoretically may be a highly effective way to accomplish

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[38] *See Petition for Relief and Compliance*, CC Docket No. 96-98 (filed Sept. 9, 1996) ("Excell Petition"). USTA's file copy of the Excell Petition is stamped "ex parte or late filed." While it is not clear whether the Excell Petition has been accepted for filing as a petition for reconsideration of the *Second Order*, USTA addresses it in this response for purposes of completeness.

[39] *See* 47 C.F.R. § 251(b)(3).

[40] *See* Excell Petition at 3, Attached Position Statement at 6, 10.

[41] *See* 47 U.S.C. § 153(47), (48).

nondiscriminatory assistance, this is not the case in practice," claiming that such access would be too expensive for competing providers.[42]

The *Second Order* states only that read-only access would provide nondiscriminatory access to directory assistance databases.[43] Incumbent LECs can provide nondiscriminatory access to such databases in any format, including that provided by the incumbent LECs to themselves.[44] As USTA stated in its petition, the Commission should clarify that non-discriminatory access to directory assistance databases does not, however, include transfer of directory assistance databases to new entrants.[45] As USTA noted, one of the benefits of shared access to incumbent LEC directory assistance databases through electronic gateways is that new entrants are spared the cost of entering the information in their systems, a cost which appears to be at the heart of Excell's petition.

USTA also opposes Excell's request that the Commission require incumbent LECs to provide access to subscriber list information on unlisted customers.[46] The 1996 Act's definition of "subscriber list information" expressly includes only information pertaining to listed subscribers and published information.[47] It does not include unlisted or nonpublished subscriber information. The Commission correctly precluded access to such information.[48]

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[42] Excell Petition at 8.

[43] *See Second Order* at ¶ 143.

[44] *See Second Order*, App. B-7, § 51.217(a)(2).

[45] *See* USTA Petition at 3-4.

[46] *See* Excell Petition at 9.

[47] *See* 47 U.S.C. § 222(f)(3).

[48] *See Second Order* at ¶¶ 135, 141.

III. CONCLUSION

USTA respectfully requests the Commission to deny certain petitions for reconsideration or clarification of the *Second Order* and to grant others as discussed above.

Respectfully submitted,

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November 20, 1996

CERTIFICATE OF SERVICE

I, Gina Thorson, do certify that on November 20, 1996 copies of the USTA's Opposition to Petitions for Review of the Second Report and Order, were either hand-delivered, or deposited in the U.S. Mail, first - class, postage prepaid to the persons on the attached service list.

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