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March 12, 1997

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EX PARTE

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

Federal Communications Commission
Office of Secretary

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

Dear Mr. Caton:

In accordance with the Commission's Rules governing *ex parte* presentations, please be advised that yesterday Virginia Vann, Tim Leahy, Bob Gryzmala, and the undersigned, representing SBC Communications Inc. and Southwestern Bell Telephone Company (SWBT), met with Richard Metzger and Paul Gallant of the Common Carrier Bureau. The purpose of the meeting was to discuss SWBT's position in the above-referenced rule making docket.

The attached materials served as a basis and outline for our discussion. Pursuant to Section 1.1206(a)(1) of the Commission's Rules, 47 C.F.R. § 1.1206(a)(1), two copies of this notification and the materials are provided for your use. Due to unavoidable circumstances, we were unable to file this notification with your office yesterday. We apologize for any inconvenience this may cause. Should you have any questions concerning the foregoing, do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads "Todd F. Silbergeld".

Attachment

cc: Mr. Metzger
Mr. Gallant

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Federal Communications Commission
Office of Secretary**ANY RULES IMPLEMENTING SECTION 222(c)(1) MUST APPLY EQUALLY
TO ALL TELECOMMUNICATIONS CARRIERS.**

Congress directed that CPNI privacy requirements apply to "a telecommunications carrier that receives or obtains [CPNI]." Section 222(c)(1).

A "telecommunications carrier" is "any provider of telecommunications services" except telecommunications service aggregators. Section 153(44).

Elsewhere, Congress indicated its intent that the CPNI privacy requirements apply to all telecommunications carriers:

- The title of Section 222(c)(1) is unqualified: "Privacy Requirements For Telecommunications Carriers."
- The duty is unqualified: "**Every** telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to . . . customers." Section 222(a) (emphasis added).
- When Congress intended to obligate fewer than all carriers, it did so. For example, Subscriber List Information obligations attach only to a telecommunications carrier "that provides telephone exchange service," Section 222(e), and use by a "local exchange carrier" of aggregate customer information for purposes other than those described in subsection (c)(1) is limited. Section 222(c)(3). No such qualifying language appears in Section 222(c)(1)'s mandatory privacy requirements.

Consumers' legitimate privacy expectations support the application of Section 222(c)(1) to all telecommunications carriers. As the Pennsylvania Office of the Attorney General, Office of Consumer Advocate ("PaOCA") correctly observed, "[t]here is no reason to believe that the privacy of consumers served by some telecommunications carriers are deserving of protection more than others. The PaOCA submits that the privacy of all consumers is protected under the terms of Section 222 and the privacy of all consumers is equally deserving of protection regardless as to which telecommunications carriers serve them." Comments at 5.

The Commission's pre-Telecommunications Act CPNI rules, which apply only to particular telecommunications carriers, are in direct conflict with the requirements of Section 222(c)(1) of the Act, which apply to all telecommunications carriers. That conflict cannot be reconciled. Therefore, the rules must yield to the Act.

**SECTION 222(c)(1) SHOULD BE INTERPRETED TO PERMIT A
TELECOMMUNICATIONS CARRIER TO USE CPNI TO MARKET AND PROVIDE
VARIOUS SERVICE OFFERINGS COMPRISING AN INTEGRATED
TELECOMMUNICATIONS SERVICE PACKAGE.**

“Traditional” service distinctions are being out paced by technology-driven advancements.

As one commentor noted, such distinctions “are becoming blurred by new service offerings comprising elements of several previously distinct categories.” (CompTel Comments at p. 5)

A TWO-STEP APPROVAL PROCESS -- ONE-TIME NOTIFICATION PLUS A RIGHT TO CONTACT THE CARRIER SHOULD A CUSTOMER ELECT TO RESTRICT CPNI USE -- WOULD BE EFFECTIVE AND EASY TO ADMINISTER.

Step One. A one-time bill message or bill insert in which the telecommunications carrier simply and succinctly provides the following information:

- the customer's CPNI rights
- the CPNI use contemplated by the carrier for which approval is required
- the customer's right to restrict such use
- the means by which the customer may restrict such use (either orally or in writing) that the CPNI use contemplated by the carrier will be permitted absent restriction

Step Two. Either of the following:

- the customer requests CPNI restriction
- the customer does not request CPNI restriction

The foregoing process would fully accommodate customers' CPNI rights without requiring carriers to implement overly burdensome or detailed procedures. The process would also be consistent with the customer expectations indicated by the results of the National Opinion Survey conducted by Opinion Research Corporation and Professor Alan F. Westin, filed with the Commission on December 11, 1996 by Pacific Telesis. Among the survey's findings were:

- Large majorities of respondents said that they would be interested in learning about new services from their local telephone company. (Finding No. 7).
- Large majorities also say that it is acceptable for their local telephone company to look up their records and offer them additional services, and offering an opt out increases this majority to 82 percent.

These results are consistent with the lack of complaints made to Southwestern Bell Telephone Company about CPNI. A recent sample of total complaints received in 1996 reflects that less than 2 percent (*i.e.*, 326) had to do with telemarketing, and only one of 35 from this sample dealt specifically with the use of CPNI.

A BOC'S USE OF CPNI TO SUPPORT JOINT MARKETING AND SALES FOR A SECTION 272 AFFILIATE, OR ITS PROVIDING CPNI TO AN AFFILIATE FOR SUCH A PURPOSE, ARE ACTIVITIES WITHIN SECTION 272(g)(3).

After a BOC receives interLATA authorization under Section 271, it "will be permitted to engage in the same kind of marketing activities as other service providers." Order, CC Docket No. 96-149, FCC 96-489, released December 24, 1996 ("Order") at para. 291.

Section 272(g)(3) excepts "joint marketing and sale" of interLATA services from the nondiscrimination requirements of Section 272(c)(1).

Section 272(c)(1) imposes a nondiscrimination requirement upon a BOC which provides "information" to its Section 272 affiliate. Order, para. 218.

The term "information" includes CPNI. Id., at para. 222.

CPNI is integral to the following activities within Section 272(g)(3):

- The BOC jointly markets local and long distance services.
- The BOC's Section 272 affiliate jointly markets local and long distance services.
- The BOC's non-Section 272 affiliate jointly markets local and long distance services.

Section 272(g)(3) and Commission precedent contemplate that the BOC and its affiliates can share or use CPNI on an exclusive basis in support of the following specific joint marketing activities:

- to respond to customer inquiries - Order, para. 296.
- to perform sales functions - Id.
- to process orders for services requested - Id.
- other activities on a case-by-case basis - Id.
- to "identify potential customers . . . and formulate proposals to those customers" - Phase II Supplemental NPRM, CC Docket No. 85-229, FCC 86-253, released June 16, 1986, para. 55.
- to "identify certain customers whose telecommunications needs are not being met effectively and to market an appropriate package of enhanced and basic services to such customers" - Phase II Recon. Order, 3 FCC Rcd 1150 (1988), para. 97.

Thus, a BOC's use of CPNI to support joint marketing and sales, or its providing CPNI to an affiliate for such a purpose, are activities permitted to be done within Section 272(g)(3) on an exclusive basis.