No company should be required to secure customer approvals for another party or process their approvals for them -- whether those approvals are provided orally or in writing. Nothing in Sections 222 or 272 compels or supports a contrary conclusion.

6c. The question is somewhat unclear. It references a customer who has approved CPNI disclosure to both the BOC's Section 272 affiliate and unaffiliated entities. While this certainly could occur (e.g., the BOC secures consent through a notice and opt-out communication and the unaffiliated entity secures the consent through some other affirmative means), it should not be assumed that the third-party consent would be secured through a BOC-initiated communication.

With respect to the provisioning of CPNI, once requisite approvals have been secured, it is reasonable to expect that "similary-situated" CPNI provisioning would be treated similarly insofar as rates, terms and conditions (including service intervals). For example, a Section 272 affiliate securing CPNI through U S WEST's Operating Support System ("OSS") gateway, in conjunction with accessing a Customer Service Record ("CSR") with respect to the provision of local service, will get substantially equivalent access to the CPNI at a price and service interval substantially equivalent to that of a third party. Similarly, to the extent that the affiliate accesses CPNI through some type of manual process, the affiliate would also be treated similarly to third parties. (Much of the CPNI currently provided to Enhanced Service Providers ("ESP") and Customer Premises Equipment ("CPE") providers is done manually. Traditionally, there has been no charge for the provisioning. The length of time to provision the information depends on the amount of information involved.)

Where there would be expected to be a difference in rates, terms and conditions is where there is a bulk provision of CPNI made to an affiliate. While non-affiliates might, in fact, receive some CPNI "in bulk" (meaning a great deal at a time due to a great number of proffered "authorizations"), a BOC -- with appropriate approvals -- would be empowered to provide CPNI to an affiliate either a record at a time or

many records at a time. This could create rate "differentials" because of the differences in cost in the provisioning. As the Commission has stated, however, "where costs differ, rate differences that accurately reflect those differences are not unlawfully discriminatory."[39]

C. *Other Issues*

*7. **[7a.]** If, under sections 222(c)(1), 222(c)(2), and 272(c)(1), a BOC must not discriminate between its section 272 affiliate and non-affiliates with regard to the use, disclosure, or the permission of access to CPNI, what is the meaning of section 272(g)(3), which exempts the activities described in sections 272(g)(1) and 272(g)(2) from the nondiscrimination obligations of section 272(c)(1)? **[7b.]** What specific obligations with respect to the use, disclosure, and permission of access to CPNI do sections 222(c)(1) and 222(c)(2) impose on a BOC that is engaged in the activities described in sections 272(g)(1) and 272(g)(2)?*

7a, b. U S WEST disagrees with the assumption of the first question that, under the statutory sections cited, a BOC may not discriminate with regard to "the permission of access to CPNI." We believe that the approval process and the securing of any requisite permission to access or use CPNI can be different depending on the existence or nonexistence of an existing business relationship.

With respect to the meaning of Section 272(g)(3), we have answered this question in our response to Question 1. That Section clearly creates an absolute exemption to the nondiscrimination obligations created by Section 272(c)(1), to the extent the information in question is an inherent component of "joint marketing." As described above, both commercial practice and regulatory precedent support the concept that CPNI is such an inherent component.

With respect to CPNI use within a Section 272(g)(3) context, the question of whether any customer approval is necessary largely will be dependent on what the Commission does with respect to CPNI buckets, as well as the Section 272 affiliate's ultimate intended use of the CPNI, as discussed in Question 1 at 10-13.

*8. **[8a.]** To what extent is soliciting customer approval to use, disclose, or permit access to CPNI an activity described in section 272(g)? To the extent that a party claims that CPNI is essential*

[39] Non-Accounting Safeguards Order, ¶ 212.

for a BOC or section 272 affiliate to engage in any of the activities described in section 272(g), please describe in detail the basis for that position. ***[8b.]*** *To the extent that a party claims that CPNI is not essential for a BOC or section 272 affiliate to engage in those activities, please describe in detail the basis for that position.*

8a. A BOC's communication with its subscribers relating its access to, use of, and disclosure practices around, CPNI -- one of its most valuable commercial properties -- is not itself "joint marketing" under Section 272(g). However, to the extent that customer "approval" is required to use CPNI with respect to joint marketing, the communication is a predicate action.

The predicate communication is not dependent on the "essentiality" of the underlying information -- although CPNI clearly is essential with respect to successful and quality product planning and marketing whether done independently or jointly.[40] As discussed in the Introduction, CPNI is the foundation for much commercial speech, particularly that targeted at any particular individual. And, certainly, physical access to on-line CPNI within the context of an incoming customer call is essential to any joint marketing effort. Neither the BOC nor its affiliate can appear uneducated about the customer with whom there is an existing business relationship. Such would produce significant customer confusion.

8b. The Commission itself has concluded that there is absolute correlation between the access and use of CPNI and successful joint marketing. See notes 11, 25-26, supra, and accompanying text.

9. ***[9a.]*** *Does the phrase 'information concerning [a BOC's] provision of exchange access' in section 272(e)(2) include CPNI as defined in section 222(f)(1)? Does the phrase 'services . . . concerning [a BOC's] provision of exchange access' in section 272(e)(2) include CPNI-related approval solicitation services?* ***[9b.]*** *If such information or services are included, what must a BOC do to comply with the requirement in section 272(e)(2) that a BOC 'shall not provide any . . . services . . . or information concerning its provision of exchange access to [its affiliate] unless such . . . services . . .*

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[40] See note 20, supra. While CPNI is "essential" to quality joint marketing, particularly with respect to communications with customers on-line (see response to Question 14), it is not "essential" in the way the Commission used the term in the Non-Accounting Safeguards Order ¶ 13 (Section 272 meant to ensure that BOC's competitors "have access to essential inputs, namely, the provision of local exchange and exchange access services").

or information are made available to other providers of interLATA services in that market on the same terms and conditions'?

9a, b. Neither quoted phrase includes CPNI as defined in Section 222(f)(1). The term "exchange access" is separately defined in Section 3(16) to mean the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services. Section 272(e)(2) relates to that service offering, not to CPNI. Furthermore, it would make no sense for CPNI "information" to be the same as the information referenced in Section 272(e)(2) but to make no reference to the term CPNI -- which is itself separately defined in Section 222(f)(1).

*10. **[10a.]** Does a BOC's seeking of customer approval to use, disclose, or permit access to CPNI for or on behalf of its section 272 affiliate constitute a 'transaction' under section 272(b)(5)? **[10b.]** If so, what steps, if any, must a BOC and its section 272 affiliate take to comply with the requirements of section 272(b)(5) for purposes of CPNI?*

10a, b. A BOC's communication with its customers regarding its practices regarding access to, use of, and disclosure of, CPNI (which would include a discussion of affiliate access and practices) is not a "transaction" under Section 272(b)(5). A BOC's general communication on the matter of CPNI, not done for the sole and exclusive benefit of the Section 272 affiliate, would not implicate the provisions of Section 272(b)(5).[41] This being said, however, there might be an underlying "transaction" that might benefit from or be enriched by the access to CPNI (e.g., marketing (either jointly or independently)).[42] Furthermore, the licensing of the CPNI to affiliated enterprises would also appear to be a "transaction."

11. Please comment on any other issues relating to the interplay between sections 222 and 272.

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[41] Compare the Commission's treatment of general research and development activities in the context of a Section 274 affiliated operation. To the extent the research and development was not undertaken for the specific benefit of the 274 operation, it is not precluded as a prohibited transaction. Section 274 Report and Order, CC Docket No. 96-152, FCC 97-35, rel. Feb. 7, 1997 ¶ 101.

[42] U S WEST considers an affiliate transaction to include services offered or assets transferred to an affiliate. Based on past precedent, joint marketing would be a "service" when offered by the BOC to the Section 272 affiliate. Other services that might also be related to CPNI in a substantive sense would be the licensing of the CPNI, subsequent to appropriate approvals.

Should the Commission determine that Section 272 has any applicability to CPNI beyond those similar obligations imposed by Section 222, it should assure that such regulations do not extend beyond the mandatory separations structure between the BOC and the Section 272 affiliate. There should be a sunset provision to the Commission's regulations.

12. Please propose any specific rules that the Commission should adopt to implement section 222 consistent with the provisions of section 272.

U S WEST generally supports the proposed language offered by Pacific Telesis in its Proposed CPNI Notice,[43] with one *caveat*. There should be no "hiatus" period during which a carrier with an existing business relationship with a customer should be considered not to have tacit or implied approval to use the commercial business information in its possession for all lawful purposes. As U S WEST previously explained, while a 30-day hiatus period might make sense with respect to the release of information to third parties, such a time lag between notice and customer "approval" is inappropriate where a company must access its CPNI to carry on every day business.[44] Until and unless a customer "opts-out" of the carrier's access and use of CPNI, it should be considered lawful access and use.

II. INTERPLAY BETWEEN SECTION 222 AND SECTION 274

A. Threshold Issues

13. To what extent, if any, does the term 'basic telephone service information,' as used in section 274(c)(2)(B) and defined in section 274(i)(3), include information that is classified as CPNI under section 222(f)(1)?

Section 274(i)(3) provides: "The term 'basic telephone service information' means network and customer information of a Bell operating company and other information acquired by a Bell operating

[43] See Ex Parte Letter to William F. Caton, FCC, from Gina Harrison, Pacific Telesis, dated Dec. 10, 1996 in which it submitted a proposed CPNI notice as Attachment A and corresponding governing rule as Attachment B, in response to staff request.

[44] See Ex Parte letter to William F. Caton, FCC, from Kathryn Marie Krause, U S WEST, dated Jan. 10, 1997 at 2.

company as a result of its engaging in the provision of basic telephone service." The term would include CPNI as defined in Section 222(f)(1).

B. Using, Disclosing, and Permitting Access to CPNI

(i). Section 274(c)(2)(A) -- Inbound Telemarketing or Referral Services

*14. **[14a.]** Does section 274(c)(2)(A) mean that a BOC that is providing 'inbound telemarketing or referral services related to the provision of electronic publishing' to a separated affiliate, electronic publishing joint venture, or affiliate may use, disclose, or permit access to CPNI in connection with those services only if the CPNI is made available, on nondiscriminatory terms, to all unaffiliated electronic publishers who have requested such services? **[14b.]** If not, what obligation does the nondiscrimination requirement of section 274(c)(2)(A) impose on a BOC with respect to the use, disclosure, or permission of access to CPNI?*

14a, b. Section 274(c)(2)(A) sets forth a narrow exception to the prohibitions on BOC joint marketing in Section 274(c)(1)(A) & (B). It permits a BOC to provide either inbound telemarketing or referral services related to the provision of electronic publishing for a separated affiliate, an electronic publishing joint venture, an affiliate, or an unaffiliated electronic publisher. The BOC may provide these limited services for one or more of these entities, if "such services" are made available by the BOC to all electronic publishers upon request on nondiscriminatory terms.[45] The nondiscrimination obligation in Section 274(c)(2)(A) attaches only to the referenced "services," i.e., inbound telemarketing or referral services provided by the BOC.

On its face, Section 274(c)(2)(A) does not address CPNI. But, as discussed in the Introduction, CPNI is necessary to any successful joint marketing activity. Inbound joint marketing and referral services, provided with respect to a customer "on-line," would require access to CPNI on the screen.[46] There would

[45] Unlike Section 272(c)(1), which imposes a nondiscrimination duty on the BOC with regard to the provision of "goods, services, facilities, and information" to a Section 272 affiliate engaged in the provision of in-region interLATA services, interLATA information services, or manufacturing, Section 274 contains no comparable general nondiscrimination obligation.

[46] When the customer calls in, the BOC service representative will pull up customer record information, associated with the telephone number, in order to speak intelligently with the customer. Access to the CPNI in this context is currently controlled by the Commission's Computer III/Open Network Architecture

simply be no way to market or speak to a customer about a product or a referral in the absence of the information. Thus, to the extent a BOC would need to access CPNI to provide the joint marketing or referral services to the Section's identified entities, Section 274(c)(2)(A) would require that that CPNI access be nondiscriminatory.[47]

It should be noted, however, that neither joint marketing nor referral services necessarily require that CPNI be provided or disclosed by the BOC to the entity on whose behalf the service is being rendered. The need to provide or disclose CPNI will depend on the nature of the joint marketing and referral services being provided.[48]

Beyond those services, however, Section 274(c)(2)(A) contains no "nondiscriminatory" provisioning requirement regarding CPNI as between a BOC affiliated company and one with no such affiliation. On the other hand, the statutory provision does not prohibit such disclosure, provided appropriate customer approvals have been secured.

(ii). Section 274(c)(2)(B) -- Teaming or Business Arrangements

*15. **[15a.]** To the extent that basic telephone service information is also CPNI, should section 274(c)(2)(B) be construed to mean that a BOC, engaged in an electronic publishing 'teaming' or 'business arrangement' with 'any separated affiliate or any other electronic publisher,' may use, disclose, or permit access to basic telephone service information that is CPNI in connection with that teaming or business arrangement only if such CPNI is also made available on a nondiscriminatory basis to other teaming or business arrangements and unaffiliated electronic publishers? **[15b.]** If not, what obligation does the nondiscrimination requirement of section 274(c)(2)(B) impose on a BOC with respect to the use, disclosure, or permission of access to CPNI?*

CPNI rules. Therefor, if an account is "restricted," the CPNI will only be accessible by a "network only" service representative who would not engage in the kind of joint marketing discussed herein.

[47] See response to Question 18c with respect to the type of approval necessary to support access by a BOC with respect to its affiliates versus the approval process most likely to be used with respect to an unaffiliated third party electronic publisher.

[48] For example, a referral service that operated ubiquitously with respect to every incoming call would certainly require access to the CPNI (see response to Question 14) but would not really involve a "use" of the CPNI to make the referral. No customer approval would be necessary with respect to third party referrals in such context. On the other hand, targeted referrals (based on certain CPNI criteria) would require such approval.

15a, b. The answer to Question 15a. is "No." Section 274(c)(2)(B) requires that a BOC not discriminate between two types of teaming or business arrangements, i.e., those that it engages in with an affiliate and those that it engages in with a previously unaffiliated[49] electronic publisher.[50] In such arrangements, on a nondiscriminatory basis, the BOC may only provide facilities, services, and basic telephone service information, and it may not own the teaming or business arrangement.

Section 274(c)(2)(B) never addresses those situations where a teaming or business arrangement is constituted by third parties with no BOC participation. The Section makes no reference to and has no relevance to teaming or business arrangements in which the BOC does not participate (totally third-party activities).

Thus, any nondiscrimination obligation in Section 274(c)(2)(B), as it may relate to the use or disclosure of basic telephone service information (or CPNI), or permitting access to such information, is limited to those teaming or business arrangements in which the BOC is a participant. There is no nondiscrimination obligation as between a BOC-participant teaming or business arrangement and "other teaming or business arrangements and unaffiliated electronic publishers."

16. If section 222(c)(2) permits a BOC to disclose a customer's CPNI to a third party only pursuant to the customer's 'affirmative written request,' does section 274(c)(2)(B) require that the entities, both affiliated and non-affiliated, engaged in section 274 teaming or business arrangements

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[49] The significance of the term "previously unaffiliated" will become clearer below. See response to Question 16.

[50] Indeed, the Commission held precisely this in CC Docket No. 96-152 where the Commission interpreted the nondiscrimination obligation to mean that "a BOC would be prohibited from favoring a teaming arrangement with a separated affiliate over an arrangement with an unaffiliated electronic publishing provider in the provision of the BOC's facilities, services and basic telephone service information." Section 274 Report and Order ¶ 168. In this same Order, the Commission also concluded that Section 274(c)(2)(B) does not require a BOC to participate in teaming or business arrangements. If a BOC chooses to participate in a teaming or business arrangement with some entities who are engaged in providing electronic publishing, the Act does not require the BOC to participate in a teaming or business arrangement with other electronic publishers. Id.

with the BOC be treated as third parties for which the BOC must have a customer's affirmative written request before disclosing CPNI to such entities?

As U S WEST has stated above, Section 222(c)(2) does not impose an absolute "affirmative written consent" obligation on providing CPNI to a third party. Rather, it creates a carrier obligation to respond to affirmative written customer designations.

Thus, the "approval" necessary for a BOC teaming or business arrangement to use basic telephone service information (or CPNI) is not controlled by Section 222(c)(2). Rather, it is controlled by Section 222(c)(1). This is clear since in each case, the "telecommunications carrier" (i.e., the BOC) is a party to the arrangement.

As discussed above, Section 274(c)(2)(B) addresses two types of teaming or business arrangements. One is where the BOC engages in the arrangement with one of its pre-existing affiliates (Type I). The other is where a BOC engages in the arrangement with a previously unaffiliated electronic publisher (Type II). For purposes of access, use and disclosure of basic telephone service information (or CPNI), however, both types of teaming or business arrangements should be treated substantially similarly.

Once a BOC chooses to engage in a business or teaming arrangement with a previously unaffiliated electronic publisher, a type of "affiliation" is certainly created. While the arrangement may not be an "affiliate" under the Commission's construction of the statutory terms in the 1996 Act (because the BOC is not permitted to own the arrangement), from a customer's perspective the "affiliation" should be the controlling factor. The trust imposed in the BOC will extend to this type of arrangement, much as it would to the Type I arrangement.

Thus, a BOC should be permitted to treat both Type I and Type II arrangements alike, securing any necessary customer approval to use the basic telephone service information (or CPNI) through a range of approval mechanisms, including a notice and opt-out approval method.[51]

(iii). Section 274(c)(2)(C) -- Electronic Publishing Joint Ventures

17. Should section 274(c)(2)(C) be construed to mean that an electronic publishing joint venture be treated as a third party for which the BOC must have a customer's approval, whether oral, written, or opt-out, before disclosing CPNI to that joint venture or to joint venture partners?

The joint venture should not be treated as a "third party." The joint venture would be a BOC affiliate and should be treated as such, for purpose of the joint venture. To the extent that a BOC communicates with its customers about sharing basic telephone service information (including access to and use of CPNI) with such a joint venture, pursuant to an opt-out communication for example, the venture would have the necessary customer "approval" to access and use the CPNI.[52]

C. Customer Approval

(i). Section 274(c)(2)(A) -- Inbound Telemarketing or Referral Services

*18. **[18a.]** Must a BOC that is providing inbound telemarketing or referral services to a 'separated affiliate, electronic publishing joint venture, affiliate, or unaffiliated electronic publisher' under section 274(c)(2)(A) obtain customer approval pursuant to section 222(c) before using, disclosing, or permitting access to CPNI on behalf of such entities? **[18b.]** If so, what forms of customer approval (oral, written, or opt-out) would be necessary to permit a BOC to use a customer's CPNI on behalf of each of these entities in this situation? **[18c.]** What impact, if any, does section 222(d)(3) have on the forms of customer approval in connection with section 274(c)(2)(A) activities?*

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[51] Prudence would dictate that the contract in a Type II arrangement would make clear that basic telephone service information (or CPNI) can be used only in furtherance of the arrangement and not for any independent use of the previously unaffiliated electronic publisher. Absent the affiliation with the BOC, the electronic publisher should not be permitted to benefit from the pre-existing relationship between the BOC and its customers or from the use of a notice and opt-out method of securing customer approval. Rather, when the previously unaffiliated electronic publisher stands alone, it is a "third party" to the customer, and it should have to secure approval through more affirmative means.

[52] Similar to the note above, the joint venture contract would undoubtedly constrain the use of any basic telephone service information (or CPNI) to the duration and purpose of the joint venture.

18a, b. To the extent that the BOC is providing inbound telemarketing or referral services for any of its affiliated entities (be it an electronic publishing affiliate or an electronic publishing joint venture) and to the extent the product/service being marketed is "necessary to, or used in" (the language of Section 222(c)(1)(B)) the provision of the telecommunications service being discussed, no customer approval is necessary for the BOC to market the service.

Beyond already authorized Section 222(c)(1)(B) activities, customer approval to use the CPNI would be necessary. The type of approval would be dependent on whether the BOC was providing the 274(c)(2)(A) inbound marketing or referral services on behalf of an affiliate or a non-affiliated entity.

With respect to the provision of services on behalf of an affiliate, such approval could be found or secured through a variety of means, including "tacit approval" (stemming from the existing business relationship between the BOC and the end user), implied approval (utilizing a notice and opt-out communication), general oral approvals (permitted by Section 222(c)(1)) or targeted oral approvals (permitted by Section 222(d)(3)).

With regard to the securing of approval with respect to a non-affiliated entity, something affirmative would need to be done to secure the requisite approval.

Even though there may be a different customer approval process for access to and use of CPNI as between an electronic publishing affiliate and a non-affiliate, for each of whom the BOC provides nondiscriminatory inbound telemarketing or referral services, the different approval processes do not raise an issue under the nondiscrimination obligation in Section 274(c)(2)(A), because that Section makes no specific reference to CPNI or other types of customer information in the first instance. To the extent that CPNI is accessed or provided on a nondiscriminatory basis with respect to joint marketing and referral services, other uses of CPNI are not implicated. To the extent that those other uses may also involve different approval processes, there is no statutory implication.

18c. The approval necessary to allow the BOC and/or its affiliate to use the CPNI is discussed above. Depending on the particular terms and conditions of the provision of inbound telemarketing or referral services for a non-affiliated company, there might need to be additional customer approval with respect to non-affiliated CPNI access and use. To the extent approval was necessary with respect to an inbound customer call who would be "on-line," it is likely that any necessary approval would be secured through a Section 222(d)(3) communication.[53]

*19. **[19a.]** Must a BOC that solicits customer approval, whether oral, written, or opt-out, on behalf of its separated affiliate or electronic publishing joint venture also offer to solicit that approval on behalf of unaffiliated entities? **[19b.]** That is, must the BOC offer an 'approval solicitation service' to unaffiliated electronic publishers when it provides such a service for its section 274 separated affiliates, electronic publishing joint ventures, or affiliates under section 274(c)(2)(A)? **[19c.]** What impact, if any, does section 222(d)(3) have on the BOC's obligations under section 274(c)(2)(A) with regard to the solicitation of a customer's approval during a customer-initiated call? **[19d.]** What specific steps, if any, must a BOC take to ensure that any solicitation it makes to obtain customer approval does not favor its section 274 separated affiliates or electronic publishing joint ventures or affiliates over unaffiliated entities? **[19e.]** If the customer approves disclosure to both the BOC's section 274 separated affiliates or electronic publishing joint ventures or affiliates and unaffiliated entities, must a BOC provide the customer's CPNI to the unaffiliated entities on the same rates, terms, and conditions (including service intervals) as it provides the CPNI to its section 274 separated affiliates or electronic publishing joint ventures or affiliates?*

19a, b. Under Section 274(c)(2)(A), if a BOC provides inbound telemarketing or referral services for its electronic publishing affiliate, the only nondiscrimination obligation imposed on the BOC with respect to third-party electronic publishers is that it provide "such services," i.e., inbound telemarketing or referral services, to third-party electronic publishers on request on nondiscriminatory terms. To the extent CPNI access and/or use is necessary to the particular configuration of the service, and prior customer approval is required but has not previously been secured, a BOC could agree to secure the consent of a customer on behalf of a third party, utilizing a Section 222(d)(3) approach.

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[53] Of course, a third party could have customer approval through some other type of independent affirmative approval process. If that were the case, perhaps the BOC would have its CPNI "marked" to indicate such prior approval. Section 222(d)(3) consent would then be unnecessary.

However, the access and use of CPNI unrelated to the provision of inbound telemarketing or referral services, is not covered by the nondiscrimination obligation in Section 274(c)(2)(A). Just as Section 274(c)(2)(A) has no substantive application to general access to and use of CPNI, neither does it have any relevance to the approval process associated with securing a right to generally access or use CPNI.

Similarly, under Section 274(c)(2)(C), if a BOC participates in a joint venture with an affiliated or a previously unaffiliated electronic publisher and if the BOC provides the joint venture with CPNI, the Section sets up no statutory obligation to provide CPNI to other electronic publishers generally in a nondiscriminatory fashion.

19c. Section 222(d)(3) imposes no obligation on a BOC or any other telecommunications carrier. Rather, it provides a permissive way to secure CPNI approval -- to the extent such approval is necessary and has not otherwise been secured.

19d. There are no specific steps that a BOC must take with respect to CPNI approvals to ensure that its commercial speech with its customers or its ultimate approval to use CPNI does not favor itself and its affiliates over totally unaffiliated companies.

19e. Where entities receiving CPNI are similarly situated and the receipt of CPNI is similar, similar provisioning rates, terms and conditions should apply. See the response to Question 6c. A similar analysis pertains here.

> *20. **[20a.]** To the extent that sections 222(c)(1) and 222(d)(3) require customer approval, but not an affirmative written request, before a carrier may use, disclose, or permit access to CPNI, must a BOC disclose CPNI to unaffiliated electronic publishers under the same standard for customer approval as is permitted in connection with its section 274 separated affiliate, electronic publishing joint venture, or affiliate under section 274(c)(2)(A)?[54] **[20b.]** If, for example, a BOC may disclose CPNI to its section 274 separated affiliate pursuant to the customer's oral or opt-out approval, is the BOC*

[54] This question ignores the fact that Section 222(c)(1)(A) and (B) allow certain uses of CPNI without any customer approval. It also inappropriately characterizes Section 222(d)(3) as a mandatory section (i.e., "require customer approval") when it is, in fact, a permissive section.

required to disclose CPNI to unaffiliated entities upon the customer's approval pursuant to the same method?

20a. Section 274(c)(2)(A) deals only with the provision of inbound telemarketing or referral services for an electronic publishing affiliate or joint venture, and for an unaffiliated electronic publisher if the BOC provides such services to its own affiliates or joint ventures. It has no application to the independent provision of CPNI to these entities.

To the extent that a BOC provides CPNI, with appropriate customer approval, to an electronic publishing affiliate or a joint venture in which the BOC participates and the provision of CPNI is independent of the joint marketing or referral services which it performs for them, Section 274(c)(2)(A) is not implicated. The BOC may secure the requisite approval through a variety of mechanisms. Third-party electronic publishers desiring CPNI also have a variety of mechanisms available to them with respect securing customer approval.

20b. Approval processes as between a business with an existing business relationship and one without need not be the same. The answer to this question is the same as is found in the responses to Questions 16 and 18(a).

(ii). Section 274(c)(2)(B) -- Teaming or Business Arrangements

*21. **[21a.]** Must a BOC, that is engaged in a teaming or business arrangement under section 274(c)(2)(B) with 'any separated affiliate or with any other electronic publisher,' obtain customer approval before using, disclosing, or permitting access to CPNI for such entities? **[21b.]** What forms of customer approval (oral, written, or opt-out) would be necessary to permit a BOC to use a customer's CPNI on behalf of each of these entities in this situation?*

21a. To the extent that a BOC is using CPNI in conformity with Section 222(c)(1)(A) and (B), a BOC would not need any customer approval to use the CPNI in the context of a teaming or business arrangement under Section 274(c)(2)(B).

21b. To the extent the CPNI was being used for purposes beyond 222(c)(1)(A) and (B), then approval would be necessary. Such approval could be based on a number of different mechanisms, as discussed in responses to various Questions throughout.

*22. **[22a.]** Must a BOC that solicits customer approval, whether oral, written, or opt-out, on behalf of any of its teaming or business arrangements under section 274(c)(2)(B) also offer to solicit that approval on behalf of other teaming arrangements and unaffiliated electronic publishers? **[22b.]** That is, must the BOC offer an 'approval solicitation service' to unaffiliated electronic publishers and teaming arrangements when it provides such a service for any of its teaming or business arrangements under section 274(c)(2)(B)? **[22c.]** If so, what specific steps, if any, must a BOC take to ensure that any solicitation it makes to obtain customer approval does not favor its electronic publishing teaming or business arrangements over unaffiliated entities? **[22d.]** If the customer approves disclosure to both the BOC's electronic publishing teaming or business arrangements and unaffiliated entities, must a BOC provide the customer's CPNI to the unaffiliated entities on the same rates, terms, and conditions (including service intervals) as it provides the CPNI to its electronic publishing teaming or business arrangements?*

22a, b, c, d. See responses to Questions 6 and 19 a,b,d, & e. The same analysis applies here.

*23. **[23a.]** To the extent that sections 222(c)(1) and 222(c)(2) require customer approval, but not an affirmative written request, before a carrier may use, disclose, or permit access to CPNI, must a BOC disclose CPNI to unaffiliated electronic publishers under the same standard for customer approval as is permitted in connection with its teaming or business arrangements under section 274(c)(2)(B)? **[23b.]** If, for example, a BOC may disclose CPNI to a section 274 separated affiliate with which the BOC has a teaming arrangement pursuant the customer's oral or opt-out approval, is the BOC likewise required to disclose CPNI to unaffiliated electronic publishers or teaming arrangements upon obtaining approval from the customer pursuant to the same method?*

23a, b. See the response to Question 20. A similar analysis applies here.

D. Other Issues

*24. **[24a.]** Does the seeking of customer approval to use, disclose, or permit access to CPNI for or on behalf of its section 274 separated affiliate or electronic publishing joint venture constitute a 'transaction' under section 274(b)(3)? **[24b.]** If so, what steps, if any, must the BOC and its section 274 separated affiliate or electronic publishing joint venture take to comply with the requirements of section 274(b)(3) for purposes of CPNI?*

24a, b. See the response to Question 10. A similar analysis applies here.

25. Please comment on any other issues relating to the interplay between sections 222 and 274.

The Commission should determine that BOC internal and affiliate CPNI access and use is totally unaffected by Section 274. To the extent that Section requires nondiscriminatory behavior with respect to the provision of joint marketing or referral services to unaffiliated electronic publishers, and such behavior might require on-line CPNI access and use,[55] so long as the access and use is provided on a nondiscriminatory basis, Section 274 should be found to have no further application. To the extent the CPNI is actually going to be "used" with respect to the provision of the services in question, then provided both the BOC affiliate and the non-affiliated electronic publisher have appropriate customer approval, Section 222 is satisfied. The approval processes need not be the same.

If there is a problem in the area of CPNI being provided inappropriately to unauthorized parties, or of BOC's unreasonably refusing to accommodate customer approvals secured by non-affiliated third parties, the Commission has ample authority to redress the problem through a Section 208 Complaint proceeding.

Finally, if the Commission does promulgate any rules in this area (something that is totally unnecessary), it should assure that such regulations do not extend beyond the three-year mandatory separations structure between the BOC and the Section 274 affiliate. There should be a sunset provision to the Commission's regulations.

[55] See responses to Questions 16-19.

26. Please propose any specific rules that the Commission should adopt to implement section 222 consistent with the provisions of section 274?

U S WEST has no proposed rules to offer at this time. We will review those submitted by other commenting parties and make any appropriate comments in our Reply.

Respectfully submitted,

U S WEST, INC.

By: Kathryn Marie Krause

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Its Attorney

Of Counsel,
Dan L. Poole

March 17, 1997

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 17th day of March, 1997, I have caused a copy of the foregoing **COMMENTS OF U S WEST, INC.** to be served via hand-delivery upon the persons listed on the attached service list.

Kelseau Powe, Jr.

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