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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	)	DA Docket No. 97-385

FURTHER REPLY COMMENTS OF THE NEW YORK CLEARING HOUSE ASSOCIATION, THE SECURITIES INDUSTRY ASSOCIATION, BANKERS CLEARING HOUSE, AND THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE

The Commission's Public Notice dated February 20, 1997,[1] seeks comment regarding the interplay between those provisions of the Telecommunications Act of 1996[2] that restrict access to Customer Proprietary Network Information ("CPNI"),[3] and those provisions of the 1996 Act that contain restrictions relating to the Bell Operating Companies' separated affiliates, electronic publishing joint ventures, joint marketing and other business

[1] *Common Carrier Bureau Seeks Further Comment on Specific Questions in CPNI Rulemaking*, CC Docket 96-115, Public Notice, DA 97-385 (Feb. 29, 1997) ("Public Notice").

[2] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), *codified* at 47 U.S.C. 1, *et. seq.* (the "1996 Act").

[3] 47 U.S.C. § 222 (1996).

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arrangements.[4] While the issues that arise from the interplay of these provisions generally involve matters relating to carrier competition and the restriction of anti-competitive practices, the undersigned associations submit these reply comments to assist the Commission in applying a straightforward principle regarding CPNI that harmonizes both the competitive aspects and the privacy aspects of Sections 222, 272 and 274 of the Communications Act.

As stated in the undersigned associations' reply comments filed June 26, 1996, a common-sense reading of the 1996 Act provides that CPNI derived from any transmission service offered for a fee[5] may only be used for the provision of that transmission service and any other service that is necessary to or used in such service.[6] The language of the 1996 Act makes it clear that this restriction applies to *all telecommunications carriers*[7] – Bell Operating Companies, interexchange carriers, independent local exchange carriers, resellers, wireless carriers, *etc.* In other words, notwithstanding the competitive matters addressed by other provisions of the 1996 Act, the CPNI requirements set forth in Section 222 are not diminished with respect to the protection of customers' proprietary usage and other data.

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4 *See* 47 U.S.C. §§ 272 and 274 (1996).

5 Which would include "basic telephone service" and "exchange access." *See* Public Notice questions 9 and 13. *See also* Comments of The Ad Hoc Telecommunications Users Committee *et al,* CC Docket No. 96-115 (filed June 26,1996) ("Association Comments") at 4.

6 *See* Association Comments at 4.

7 *See* 47 U.S.C. § 222 (c)(1) (1996).

Because the Section 222 restrictions apply with respect to the *usage* of CPNI,[8] as well as to disclosure, no employee, internal division, affiliate, joint venturer, competitor nor anyone else may obtain or use the CPNI for any purpose unrelated to the provision of the underlying service without the express permission of the customer.[9] Consequently, *all persons and entities,* including employees of the carrier providing the transmission service (except those that need access to the CPNI for purposes of providing such service) should be considered "third parties" regarding such CPNI and should be required to obtain customer approval before receiving it.[10]

Such a straightforward principle treats competitors, affiliates, employees and all others alike with respect to access to CPNI, protects the customers' interest in their highly sensitive and confidential usage data, and eliminates any confusion as to whether and how Section 272 affiliates, electronic publishing joint ventures, joint marketing divisions and other entities may obtain a customer's CPNI.

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8 *Id.*

9 Which the undersigned associations previously advocated should, among other things, be in writing. *See* Association Comments at 7.

10 *See* Public Notice questions 2, 3, 14, 15, 16, 17, 18, 20, 21, and 23.

CONCLUSION

For the foregoing reasons, the undersigned associations request that the Commission apply the straightforward principle suggested above, and adopt rules consistent with Congress' intent to protect the privacy of Customer Proprietary Network Information.

Respectfully submitted,

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