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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)	
)	
Implementation of the)	CC Docket No. 96-115
Telecommunications Act of 1996)	DA 97-385
)	
Telecommunications Carriers' Use)	
of Customer Proprietary Network)	
Information and Other Customer)	
Information)	

GTE's REPLY COMMENTS ON BUREAU QUESTIONS

GTE Service Corporation on behalf of its affiliated domestic telephone operating and wireless companies ("GTE") hereby offer their comments on the various questions asked by the Common Carrier Bureau in the Public Notice released February 20, 1997 (the "Notice") and the comments of various parties in relation thereto, as follows.

BACKGROUND

Comments and Reply Comments were filed in June 1996 with reference to the FCC's Notice of Proposed Rulemaking, FCC 96-221, released May 16, 1996 (the "NPRM") implementing section 222 of the Telecommunications Act of 1996 (the "1996 Act").¹ The Notice sets out a set of new questions.

¹ All section references are to 47 U.S.C. unless otherwise indicated.

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DISCUSSION

1. **The Commission should carefully distinguish between interpretation of section 222 in the case of the BOCs where there is an interaction with sections 272 and 274, and in the case of non-BOC carriers where there is no such interaction.**

Congress very carefully set out a specific set of statutory provisions to govern the Bell Operating Companies ("BOCs") as opposed to other carriers. All carriers are subject to section 222(a) through (d), while only the BOCs are subject to sections 272 (separate affiliates) and 274 (electronic publishing). The fact that Congress set out detailed provisions to govern the BOCs in sections 271-276 generally and specifically in sections 272 and 274 should lead the Commission to be equally careful about distinguishing between BOC-related factual predicates, statutory provisions, and congressional and regulatory purposes and those related to the non-BOCs.

Where there is a significant interaction between BOC-related provisions -- specifically sections 272 and 274 -- and section 222, it would be clearly wrong to create policy in terms of implementing the BOC-related statutory mandate and then to assume that this policy should apply broadly to carriers subject to section 222 only.

2. **Insofar as individually identifiable CPNI is concerned, section 222 treats all carriers the same since all carriers present the same risks.**

It is most significant that all carriers are subject to the same provisions of section 222(a) through (d) wherever individually identifiable CPNI is involved. This reflects the reality that insofar as the statutory mandate requires safeguarding the privacy of the individual, this is not related to the size or type of carrier because all carriers present the same risk of invasion of individual privacy to the extent they are in possession of CPNI. Congress knew how to distinguish between Incumbent Local Exchange Carriers

("ILECs") and other carriers -- as it did in the second sentence of section 222(c)(3) ("A local exchange carrier may use...") concerned with aggregate CPNI and in section 222(e) ("a telecommunications carrier that provides telephone exchange service shall provide....") concerned with Subscriber List Information. Where the issue is privacy, the statute treats all carriers the same under section 222, leaving for sections 272 and 274 aspects specifically involving the BOCs.

3. Any action taken by the Commission should focus on a fair and reasonable reading of the wishes of the customer.

Question 5 of the Notice says: "If section 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 each carrier, including interexchange carriers and independent LECs, disclose CPNI to unaffiliated entities under the same standard for customer approval as is permitted in connection with their affiliates and other intra-company operating units?"²

There is no suggestion anywhere in the 1996 Act that the FCC's role is to supersede the decision-making of the customer. Always, in addressing section 222, the FCC should keep its focus on a fair and reasonable reading of customer wishes, and should then adopt policies that give effect to these wishes. Where there is an existing relationship between a customer and a carrier, the Commission should not without a clear mandate intrude into this relationship, which has important value both to the customer and to the carrier.

² For reasons indicated in the following footnote, this is the only question relevant to non-BOC carriers.

In particular, where there has been under section 222(c)(1) the necessary "approval" of a customer³ to providing individually identifiable CPNI to other members of a carrier's corporate family, the claim that the carrier should be required to make the same CPNI available to entities outside the corporate family would gravely misinterpret the customer's wishes and would violate the primary thrust of section 222, which is concerned with protecting customer privacy. Indeed, in terms of the reality of existing relationships and the context of the customer's approval, this would produce a perverse result.

The implications that fairly arise from the existing relationship between GTE and its customers indicate customer consent to sharing CPNI with other members of GTE's corporate family; but do not suggest consent to turning over CPNI to firms outside the GTE corporate family. Customer approval addressed to the GTE corporate family is most certainly not tantamount to customer approval to giving their CPNI to such (mythical) firms as (1) Questionable Services, Inc., a provider of combined

³ GTE maintains this approval under section 222(c)(1) certainly may be given orally, and where the customer has been informed of the available choices and has not responded, this approval may be implied by that non-responsiveness. See GTE's Comments dated June 11, 1996 at 5-10. Otherwise, the decision would amount to cutting off the carrier from a large body of its own customers even when there is nothing to suggest such customers object to contact by the carrier informing them of ways to make better use of telecommunications services and facilities. The contrast with the phrase employed by Congress in section 222(c)(2) ("affirmative written request") shows that the word "approval" in section 222(c)(1) is nothing like that burdensome requirement. As shown by GTE's Comments at 14-16, any such interpretation would raise First Amendment problems that would undermine the ability of carriers effectively to speak to their own customers in order to inform them about new or additional services -- a form of speech that is plainly part of "the free flow of commercial information." *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 765 (1976).

slamming/900 services that operates at the edge of the law (at least); or (2) Relentless Telemarketing Corp., which grimly pursues the hapless customer beyond the grave. Since the wishes of the customer should be the touchstone, an Act of Congress designed to protect the public should not be employed to open up the public to intrusion into protected information -- an intrusion in no sense approved by the customer and often associated with aggressive marketing in violation of the expressed wishes of the mass of customers as well as the purposes of the statute.

GTE suggests the Commission, in addressing the question of approval under section 222(c)(1), should focus not on seeking to impose relationships on carriers and customers -- as urged opportunistically by a variety of parties. The focus should be on fairly recognizing existing relationships, and fully respecting decisions made by customers. There is all the difference in the world between: (1) a customer dealing with a known entity on the basis of an established working relationship; and (2) a customer being stalked by aggressive vendors with which the customer has no existing relationship. Congress and the FCC sought to make sure the rules of the road recognize this distinction.⁴

It would defeat the primary thrust of section 222 -- which is on protecting privacy -- to sacrifice customer privacy for the sake of (supposedly) leveling the playing field. The playing field will level itself as carriers establish themselves in the minds of their actual or potential customers as reliable providers of service highly valued by the

⁴ See Implementing the Consumer Protection Act of 1991, 7 FCC Rcd 8752, 8770 (1992).

customer. In other words, a service provider will earn a good or bad reputation, a good or bad working relationship. This is a normal part of the competitive universe which is the object of the 1996 Act and FCC policy.

Furthermore, experience teaches that the highest risk of overbearing corporate behavior is where there does not exist a working relationship with customers that is valuable to the service vendor. In such a case, the temptation is strongest for the vendor to engage in activities that range from over-charging to fraud.

In contrast, where an existing relationship with the customer is highly valued for the sake of ongoing profitable business, because overbearing behavior is likely to prove costly to a vendor, there is little incentive to incur the risks associated with such behavior. For a firm in this position, even if it realizes a temporary advantage by such behavior, based on its experience it will expect to be required to surrender or refund that advantage by virtue of regulation or court action.

At the opposite extreme, the classic example might be referred to by the metaphor *ships that pass in the night*. When a firm is not really concerned with repeat business much less a continuing customer relationship, and when that firm is entirely focused on the near term, specifically on obtaining cash quickly, it may be unwilling to go further than delivering a product or service that minimally complies with the legal obligation inherent in the transaction. Indeed, in this environment there may emerge not only unethical and illegal but even criminal behavior. And such behavior is often part of an aggressive sales effort via telephone where individually identifiable CPNI would be put to the worst possible use in direct opposition to the purpose of section 222. This risk to consumer privacy is again illustrated by the mythical firms

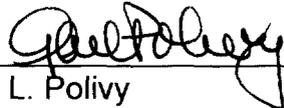
Questionable Services, Inc. and Relentless Telemarketing Corp. The consumer has most certainly not consented to turning over data to such firms simply by approving the sharing of customer-specific CPNI within the GTE family.

In summary: The FCC's interpretation of section 222 should seek to protect, and certainly not supersede, the manifest wishes of customers. It should not require carriers to provide customer-specific CPNI to unrelated firms merely because the customer approves sharing of CPNI within the carrier's corporate family.

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telephone and wireless companies

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March 27, 1997

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Reply Comments of GTE on Bureau Questions" have been mailed by first class United States mail, postage prepaid, on March 27, 1997 to all parties on the attached list.

A handwritten signature in black ink, appearing to read "Ann D. Berkowitz", written in a cursive style.

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