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April 16, 1997

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FEDERAL COMMUNICATIONS COMMISSION
Office of Secretary

William Caton
Acting Secretary
Federal Communications Commission
1919 M St. NW
Washington, D.C. 20554

Re: EX PARTE in the Merger Application of MCI and BT
General Docket No. 96-245

Dear Mr. Caton:

James E. Graf II of BTNA, Sanford Reback of MCI and I met today with Kerry Murray and Jamie Hedlund of the International Bureau staff on the above-captioned application. The items discussed were: (1) customer proprietary network information (CPNI) rules in the U.S. and U.K.; (2) accounting rates on the U.S.-U.K. route; and (3) the status of FCC review of the application and status of other regulatory approval processes. A copy of the CPNI materials provided to the staff is attached.

Sincerely,

Mary L. Brown

cc: Kerry Murray
Jamie Hedlund
James E. Graf II

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April 1997

COMMUNICATIONS ACT

Summary by Sections

Statutory Section	Text
<p>Section 222</p>	<p>Establishes certain protections for carrier proprietary information and customer proprietary network information (CPNI), which will be implemented in a pending rulemaking proceeding. (CC Docket No. 96-115)</p>
<p>Section 222(a): Duty to protect "proprietary information"</p>	<p>Provides that every carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other carriers and customers, including resellers.</p>
<p>Section 222(b): CPNI use is restricted</p>	<p>States that a carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecom service "shall use such information only for such purpose, and shall not use such information for its own marketing efforts".</p>
<p>Section 222(c)(1): CPNI use in providing services</p>	<p>Provides that except with customer approval (<i>oral approval will probably be sufficient</i>), a carrier that receives or obtains CPNI by virtue of its provision of a telecom service "shall only use, disclose, or permit access to" individually identifiable CPNI "in its provision of (A) the telecommunications service for which such information is derived, or (B) services necessary to, or used in, the provision of such" service.</p>

<p>Section 222(c)(2): CPNI disclosure</p>	<p>Requires carriers to disclose CPNI "upon affirmative written request by the customer, to any person designated by the customer".</p>
<p>Section 222(c)(3): Aggregate data can be disclosed</p>	<p>Allows carriers to use or disclose "aggregate customer information" for purposes other than in 222 (c)(1), provided such information is available on a reasonable and nondiscriminatory basis.</p>
<p>Section 222(d): CPNI disclosure without customer permission</p>	<p>Provides exceptions to the restrictions in 222(c), allowing use or disclosure of CPNI to initiate, render bill and collect for services, to protect against fraud and to provide any "inbound telemarketing, referral or administrative services to the customer for the duration of the call, if such call was initiated by the customer and the customer approves of the use of such information to provide such service".</p>
<p>Section 222(e): Subscriber list information</p>	<p>Involves telephone exchange carriers' duties to provide subscriber list information for the purpose of publishing directories.</p> <p>Subscriber list information identifies listed names of subscribers with telephone numbers and addresses or primary advertising classifications that the carrier has published (or accepted for publication) in any directory format.</p> <p>Carrier proprietary information is not defined.</p>

Section 45(1) of the Telecommunications Act 1984

This Section makes it a criminal offence for any person, engaged in the running of a public telecommunication system, intentionally to disclose to any person (regardless of their position in or outside BT) any information concerning any other person's use of the telecommunication services provided by that system, unless such disclosure is in the course of their duty.

The Section covers disclosures by relevant BT employees, as well as by BT itself. Furthermore, by Section 102 Telecommunications Act 1984, officers of the company might also face criminal proceedings, if the wrongful disclosure was with their consent, connivance, or due to their neglect.

This Section is particularly aimed at disclosure of billing information, including bill size, calling numbers, called numbers, call duration, services used, etc. However, it does not cover i) information such as the customer's telephone number, or the number of exchange lines they have, and ii) statistical information from which individual customers cannot be identified.

Data Protection Act 1984

Information relating to a living individual, which has been or is intended to be processed by reference to the individual ("personal data"), is regulated by the Data Protection Act 1984. This means that all information relating to residential customers and non-corporate business customers is subject to the provisions of the Act, whereas information relating to business customers who are corporations (but not information about individuals in those corporations) are not. The Act is complex and exemptions are tightly defined.

The Act requires that personal data are collected and processed fairly and lawfully. Compliance requires that data subjects are aware of the purposes for which the data are to be used or disclosed. When such purposes could not reasonably have been foreseen from the context in which the information was collected, the data user should take steps to see that the data subjects are notified of such purposes and given the opportunity to refuse consent.

Any person who holds personal data on databases must register under the terms of the Act with the Data Protection Registrar. It is the responsibility of every such person to ensure that the personal data they process, or cause to be processed, is covered by those registrations.

The databases must be secure from unauthorized access and must provide facilities for correcting and removing data, e.g., when instructed to do so by the data subject. Personal data should not be held for longer than is necessary for the purpose for which it is held and may not be disclosed to any person not described in the relevant registration or for a purpose incompatible with the purposes for which it is held.

Licence Conditions 38 and 38A

Conditions 38 and 38A of BT's Licence oblige BT to produce and observe Codes of Practice on the disclosure of customer information both within BT and to third parties outside BT by those of its employees engaged in the Systems Business (38) and those of its employees engaged in the Supplemental Services Business (data and value-added services) (38A). One aim of these Codes is to prevent BT using such information to obtain an unfair advantage.

The Codes state that any information a customer provides to the Systems or Supplemental Services Businesses must be assumed to have been provided in confidence and must not be disclosed outside of those Businesses (which includes outside BT) without the customer's prior recorded consent subsequently notified to the customer. Thus, for example, where employees receive customer information in their capacity for one 'regulatory' business and are in a position to use this information to attempt a sale of a product or service of another 'regulatory' business, the customer's consent must first be obtained.

Conditions 38 and 38A are not concerned with statistical data which may be disclosed without customer consent as long as individual customers cannot be identified.

Ex-directory Customers

Ex-directory customers are customers who have specifically not agreed to information about them, i.e. their name, address, and telephone number, being disclosed in a published directory. Accordingly, only in very limited circumstances may the name, address, and telephone number of ex-directory customers be disclosed.

Disclosure in Exceptional Circumstances

In certain situations, BT can disclose customer information without infringing any of the provisions cited above, for example:

- information already in the public domain, i.e. that which is publicly available, -- for example in a telephone directory;
- to comply with its licence obligations;
- to the emergency services when an emergency call has been made;
- for the prevention or detection of crime;
- pursuant to a warrant under the Interception of Communications Act 1985; and
- following a court order.

In some of these instances, BT may be obliged to make the disclosure.

Fair Trading

Even if disclosure of customer information would not be a breach of any of the provisions outlined above, the way in which customer information is disclosed could still result in breach of fair trading obligations. In general, it can be expected that an operator perceived by the regulator as having significant power in a market would be prevented from obtaining an unfair competitive advantage out of the disclosure of relevant customer information, even where such disclosure was otherwise legitimate.

Competition Legislation

European competition law, Article 86 EC Treaty, prohibits abuse of a dominant position in a market. Such abuse may include, depending on the circumstances, refusal to supply products or services to third parties and treating some customers or suppliers differently from others without objective justification.

It can be expected that if BT were perceived as having significant power in any market, it would effectively be required to be prepared to supply anything of material value, including customer information, that it has already provided to one party to any other interested party on equitable terms and conditions. This includes transfers to its own subsidiaries, joint ventures, and associated undertakings, and between different BT regulated businesses.

UK competition law (Competition Act 1980, Fair Trading Act 1973) achieves a similar result.

BT Licence Condition 17

This prohibits BT from showing undue discrimination or undue preference in respect of the supply of network and enhanced services. Not only must BT not discriminate unduly between its customers, it must also not unfairly favour its own businesses to the significant competitive disadvantage of competitors. The Director General of Telecommunications (DGT) - Oftel considers that his powers under Condition 17 are broad.

BT Licence Conditions 18 and 20B

Condition 18 prohibits BT from unfairly subsidising or cross-subsidising the:

- Supplemental Services Business (SSB - data and enhanced services);
- Apparatus Supply Business (ASB - rental, sale, and maintenance of telecommunication apparatus in the UK);
- Apparatus Production Company (APC - production of telecommunication apparatus in the UK); and

- Land Mobile Radio Services Business (LMRS - including the activities of Cellnet, although it is a separate company and operates under a separate licence, and BT Mobile, e.g. Radiopaging - but not, for example, the supply of mobile apparatus, which is an ASB activity).

Condition 20B requires BT to maintain separate accounting records for the following Businesses and, apart from the Residual Business, prohibits the unfair subsidy or unfair cross subsidy of any of them or, where the DGT is satisfied this has, or could have, a material effect on competition in the UK, any part of them:

- Access Business and its residential and business subdivisions;
- Network Business;
- Retail Systems Business and certain subdivisions of it;
- ASB;
- SSB; and
- Residual Business (BT Group's income, costs, assets, and liabilities not included in the other Businesses)

To avoid breaches of Conditions 18 and 20B, transfers (of services and goods) between businesses must be recorded and charged for. Customer information may have a value, particularly if supplied in quantity. Accordingly, in those circumstances where BT is entitled to transfer information between businesses, the value of the information may need to be recorded and charged for appropriately.

BT Licence Condition 18A

Commonly known as the Fair Trading Condition, 18A came into effect on 31 December 1996. It prohibits activities which could restrict, distort, or prevent competition in relation to the provision of telecommunication services or the running of telecommunication systems. Drawing on Articles 85 and 86 of the EU Treaty, the Condition defines such activities or abuse of a dominant position in the UK, or the making of anti-competitive agreements, or the carrying out of anti-competitive concerted practices. Oftel's ability to take effective action in respect of any BT activity which Oftel perceives to be anti-competitive is greatly increased. The DGT's discretion under this condition is wide and may affect the disclosure of customer information and use of databases.

BT Licence Condition 41A

This Condition requires that when BT enters into discussions with an Operator with a view to entering into an interconnection agreement for the provision of standard services, it must offer to enter into a confidentiality agreement under which each party will keep the other party's confidential information confidential, disclose confidential information only to those to whom the disclosure is necessary, and exercise no lesser degree of care in relation to the other party's information than they would do for their own. Such provision must also be included in the interconnection agreement itself.