licensees will include the 90 winning bidders and the 93 qualifying bidders in the D, E, and F Blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

227. *Narrowband PCS Licensees.* The Commission does not know how many narrowband PCS licenses will be granted or auctioned, as it has not yet determined the size or number of such licenses. Two auctions of narrowband PCS licenses have been conducted for a total of 41 licenses, out of which 11 were obtained by small businesses owned by members of minority groups and/or women. Small businesses were defined as those with average gross revenues for the prior three fiscal years of $40 million or less.[741] For purposes of this FRFA, the Commission is utilizing the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[742] Not all of the narrowband PCS licenses have yet been awarded. There is therefore no basis to determine the number of licenses that will be awarded to small entities in future auctions. Given the facts that nearly all radiotelephone companies have fewer than 1,000 or fewer employees[743] and that no reliable estimate of the number of prospective narrowband PCS licensees can be made, we assume, for purposes of the evaluations and conclusions in this FRFA, that all the remaining narrowband PCS licenses will be awarded to small entities.

228. *SMR Licensees.* Pursuant to 47 C.F.R. § 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.[744] The rules adopted in this order may apply

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[741] *Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, and Amendment of the Commission's Rules to Establish New Narrowband PCS*, GEN Docket No. 90-314, Competitive Bidding Third Memorandum Opinion and Order and Further Notice, 10 FCC Rcd 175, 208 (1994).

[742] 13 C.F.R. § 121.201, Standard Industrial Classification Code 4812.

[743] The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. U.S. Bureau of the Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size*, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

[744] *Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool*, PR Docket No. 89-583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693-702 (1995); *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, PR Docket No. 93-144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1995).

to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We assume, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by this order.

229. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this order includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Thus, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. Moreover, there is no basis on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this FRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by this order.

230. *Resellers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under the SBA's rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 339 companies reported that they were engaged in the resale of telephone services.[745] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by this order.

d. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

231. In this *Second Report and Order*, if carriers choose to use CPNI to market service offerings outside the customer's existing service, we obligate these carriers to (1) obtain customer approval; (2) provide their customers a one-time notification of their CPNI

[745] *Id.*

rights prior to any solicitation for approval; and (3) maintain records of customer notification and approval, whether oral, written, or electronic.

232. We require carriers to develop and implement software systems that "flag" customer service records in connection with CPNI. The flag must be conspicuously displayed within a box or comment field within the first few lines of the first computer screen, and the flag must indicate whether the customer has approved the marketing use of his or her CPNI, and reference the existing service subscription. Also in connection with the software systems, carriers must implement internal standards and procedures informing employees when they are authorized to utilize CPNI. In addition, they must develop standards and procedures to handle employees who misuse CPNI.

233. We further require that carriers maintain an electronic audit mechanism that tracks access to customer accounts and is capable of recording whenever customer records are opened, by whom, and for what purpose. Carriers must maintain these "contact histories" for a period of at least one year to ensure a sufficient evidentiary record for CPNI compliance and verification purposes. Additionally, sales personnel must obtain supervisory review of any proposed request to use CPNI for outbound marketing purposes, to ensure compliance with CPNI restrictions when conducting such campaigns.

234. Finally, carriers must submit on an annual basis a certification signed by a current corporate officer, as an agent of the corporation, attesting that he or she has personal knowledge that the carrier has complied with the rules adopted in this order. The certification must be made publicly available, and be accompanied by a statement explaining how the carrier is implementing our CPNI rules and safeguards.

e. Significant Alternatives and Steps Taken by Agency to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives

235. After consideration of possible alternatives, we have concluded that our rules should apply equally to all carriers. Several parties in their comments address the impact of possible changes in our CPNI rules on small entities.[746] As a general matter, various small entities express concern that, having never been required to comply with CPNI regulations in the past, any regulation that extends to them will impose immediate costs. Specifically, SBT argues that we should forbear from applying section 222(c)(1) to small businesses, and thereby permit their use of CPNI for all marketing purposes, because small entities need more flexibility to use CPNI to be competitive in the marketplace. SBT likewise opposes a three category approach, claiming it gives large carriers flexibility to develop and meet customers' needs, but may unnecessarily limit small business as competition grows. SBT maintains that small carriers could be competitively disadvantaged by any interpretation of section

[746] *See supra* Parts IV, V, VIII.D of the *Second Report and Order*.

222(c)(1)(A) other than the single category approach because a large carrier can base the design of a new offering on statistical customer data and market widely, while a small business can best meet specialized subscriber needs if it offers local, interexchange, and CMRS tailored to the specific subscriber. ALLTEL and SBC agree with USTA that a multiple category definition of telecommunications service would specifically burden small companies.

236. As we discussed in this order, we decline to forbear from applying section 222(c)(1) to small carriers because we are unpersuaded that customers of small businesses have less meaningful privacy interests in their CPNI. We believe that the total service approach furthers the balance of privacy and competitive considerations for all carriers and provides all carriers with flexibility in marketing their telecommunications products and services. Indeed, if SBT is accurate in its claim that small businesses typically have closer personal relationships with their customers, then small businesses likely would have less difficulty in obtaining customer approval to market services outside of a customer's existing service. Under the total service approach, carriers are able to use the customer's entire customer record in the course of providing the customer service, and no business is prohibited from meeting customer needs by offering tailored packages of local, interexchange, and CMRS with customer approval. Moreover, to the extent carriers do not choose to use CPNI for marketing purposes, or do not want to market new service categories, they do not need to comply with our approval or notice requirements. Finally, given our decisions to permit oral, written, or electronic approval under section 222(c)(1), and impose use rather than access restrictions, the total service approach addresses any concern that CPNI restrictions will disrupt the customer-carrier dialogue or the carriers' ability to provide full customer service.

237. Some commenters urge the Commission to adopt notification rules which would require dominant carriers to give their customers written notification of their CPNI rights, while smaller carriers or carriers in competitive markets would be permitted to give oral notification to its customers. We find no reason to impose a written notification requirement only on incumbent carriers. While competitive concerns may justify different regulatory treatment for certain carriers, we believe all customers, despite the size or identity of their carrier, have similar and important privacy concerns.

238. We also reject the suggestion by Arch, LDDS WorldCom, MCI, Sprint, and TCG that our rules in connection with CPNI safeguards be limited to large or incumbent carriers, as they had been previously. Rather, we maintain that Congress intended for all carriers to safeguard customer information, and that the safeguards we adopt today do not impose a greater administrative burden on small carriers. We remain unconvinced that the burdens of section 222 are so great on small carriers that they cannot comply with reasonable restrictions. Indeed, the mechanisms we require expressly factor commercial feasibility and practice into an appropriate regulatory framework, and represent minimum general requirements. We also find that the use of an electronic audit mechanism to track access to customer accounts is not overly burdensome because many carriers already maintain such

capabilities for a variety of business purposes unrelated to CPNI. Carriers have indicated that such capabilities are important, for example, to track employee use of company resources, including computers and databases, as well as for personnel disciplinary purposes. The contact histories that we require carriers to maintain for a period of at least one year also should not be burdensome to carriers because carriers routinely evaluate these contact histories to determine the success of marketing campaigns. As we discuss in this order, we believe the safeguards we adopt in this order will afford carriers the flexibility in conforming their systems, operations, and procedures to assure compliance with our rules. Furthermore, in an effort to reduce, for all carriers, the administrative burden of compliance with our rules, we specifically decline to impose a password access restriction on carrier use of CPNI. We also conclude that use restrictions are less burdensome to all carriers, including medium and small sized carriers. We decline at this time to impose a requirement of separate marketing personnel on the basis that such a rule may produce inefficiencies particularly for small carriers, and thereby may dampen competition by increasing the costs of entry into telecommunications markets.

2. Paperwork Reduction Act Analysis

239. The *Notice of Proposed Rulemaking* from which this order issues proposed changes to the Commission's information collection requirements. As required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, the Commission sought comment from the public and from the Office of Management and Budget (OMB) on the proposed changes. This *Second Report and Order* contains several new, proposed information collections. We describe our proposed collections as follows:

240. In this order, if carriers choose to use CPNI to market service offerings outside the customer's existing service, we obligate these carriers to obtain customer approval and document such approval through software "flags" on customer service records indicating whether the customer has approved or declined the marketing use of his or her CPNI when solicited. These requirements constitute new "collections of information" within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. § § 3501-3520. Implementation of this requirement is subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

241. Additionally, we require all telecommunications carriers that choose to solicit customer approval to provide their customers a one-time notification of their CPNI rights prior to any such solicitation. Pursuant to this one-time notification requirement, these carriers must maintain a record of such notifications. This requirement constitutes a new "collection of information" within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. § § 3501-3520. Implementation of this requirement is subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

242. All carriers must record whenever customer records are opened, by whom, and for what purpose, and maintain these contact histories for a period of at least one year. These requirements constitute new "collections of information" within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. § § 3501-3520. Implementation of this requirement is subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

243. Finally, we have adopted rules in this order requiring all telecommunications carriers to submit on an annual basis a certification signed by a current corporate officer attesting that he or she has personal knowledge that the carrier is in compliance with the rules we promulgated in this order, and to create an accompanying statement explaining how the carriers are implementing our rules and safeguards. Pursuant to this recordkeeping requirement, all telecommunications carriers must maintain in a publicly available file the compliance certificates and accompanying statements. This requirement constitutes a new "collection of information" within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. § § 3501-3520. Implementation of all of these recordkeeping requirements are subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

B. Further Notice of Proposed Rulemaking

1. Ex Parte Presentations

244. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 47 C.F.R. § 1.1200 *et seq.* Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 C.F.R. § 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) as well.

2. Initial Paperwork Reduction Act Analysis

245. This Further Notice contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Further Notice, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this Further Notice; OMB comments are due 60 days from the date of publication of this Further Notice in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to

enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

3. Initial Regulatory Flexibility Act Analysis

246. As required by the Regulatory Flexibility Act (RFA), as amended,[747] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this *Further Notice of Proposed Rulemaking* (*Further Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Further Notice*. The Commission will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. § 603(a). In addition, the *Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register. *See id.*

a. Need for, and Objectives of, the Proposed Rules

247. The Commission is issuing the *Further Notice* to seek comment on whether customers may restrict a carrier's use of CPNI for all marketing purposes, even within sections 222(c)(1)(A) and (B). The Commission also seeks comment on what, if any, additional further safeguards may be needed to protect the confidentiality of carrier information, including that of resellers and information service providers, and on what further enforcement mechanisms, if any, should be adopted to ensure carrier compliance with the rules adopted pursuant to the *Second Report and Order*. The Commission seeks comment on whether the duty in section 222(a) upon all telecommunications carriers to protect the confidentiality of customers' CPNI, or any other provision, permits or requires the Commission to prohibit the foreign storage of, or access to domestic CPNI, as requested by the FBI based on their national security concerns.

b. Legal basis

248. The *Further Notice* is adopted pursuant to Sections 1, 4(i), 222, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 222, and 303(r).

[747] 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

c. Description and Estimate of the Number of Small Entities to Which the Proposed Rules will Apply

249. Consistent with our conclusions in the present *Second Report and Order*, our rules apply to all telecommunications carriers; therefore, any new rules or changes in our rules adopted as a result of the *Further Notice* might impact small entities, as described in the Final Regulatory Flexibility Analysis *supra*. For a list of the small entities to which the proposed rules would apply, see the *Second Report and Order* Final Regulatory Flexibility Analysis *supra* Part X.A.1.c (Description and Estimate of the Number of Small Entities to Which the Proposed Rules will Apply). We hereby incorporate that description and estimate into this IRFA. These entities include telephone companies, wireline carriers and service providers, local exchange carriers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, wireless carriers, cellular service carriers, mobile service carriers, broadband PCS licensees, narrowband PCS licensees, SMR licensees, and resellers. We discussed *supra* the number of small businesses falling within both of the SIC categories, and attempted to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

d. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

250. Because we have not made any tentative conclusions or suggested proposed rules, we are unable at this time to describe any projected reporting, recordkeeping, or other compliance requirements. We have discussed generally in the Further Notice, *supra* Part IX, however, the possibility that such proposals, if adopted, might entail additional obligations for carriers.

e. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

251. As noted *supra*, we seek comment on whether customers may restrict a carrier's use of CPNI for all marketing purpose, and on what, if any, additional safeguards may be needed to protect the confidentiality of carrier information, as well as what further enforcement mechanisms, if any, should be adopted to ensure carrier compliance with our rules. In addition, we seek comment on whether the duty in section 222(a) upon all telecommunications carriers to protect the confidentiality of customers' CPNI, or any other provision, permits or requires the Commission to prohibit the foreign storage of, or access to domestic CPNI. Consistent with our rules in the *Second Report and Order*, our intent is to further the statutory principle that customers must have the opportunity to protect the information they view as sensitive and personal from use and disclosure by carriers. Because we have not proposed any rules, at this juncture, we are unable to forecast the economic impact on small entities.

f. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

252. None

4. Comment Filing Procedures

253. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before March 30, 1998, and reply comments on or before April 14, 1998. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C., 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C., 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C., 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C., 20554.

254. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with Section 1.49 and all other applicable sections of the Commission's Rules.[748] We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

255. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C., 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labeled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

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[748] 47 C.F.R. § 1.49. However, we require here that a summary be included with all comments and reply comments, regardless of length. This summary may be paginated separately from the rest of the pleading (*e.g.*, as "i, ii").

256. You may also file informal comments or an exact copy of your formal comments electronically via the Internet at <http://dettifoss.fcc.gov:8080/cgi-bin/ws.exe/beta/ecfs/upload.hts>. For information on filing comments via the Internet, please see <ecfs@fcc.gov>. Only one copy of electronically-filed comments must be submitted. You must put the docket number of this proceeding in the body of the text if you are filing by Internet. You must note whether an electronic submission is an exact copy of formal comments on the subject line. You also must include your full name and Postal Service mailing address in your submission.

XI. ORDERING CLAUSES

257. Accordingly, IT IS ORDERED that pursuant to Sections 1, 4(i), 222 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § § 151, 154(i), 222 and 303(r), a REPORT AND ORDER and FURTHER NOTICE OF PROPOSED RULEMAKING is hereby ADOPTED.

258. IT IS FURTHER ORDERED that, pursuant to our own motion, paragraph 222 of *In the Matter of Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996), is hereby OVERRULED.

259. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this SECOND REPORT AND ORDER and FURTHER NOTICE OF PROPOSED RULEMAKING, including the associated Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 605(b) of the Regulatory Flexibility Act, 5 U.S.C. Section 601 *et seq.* (1981).

260. IT IS FURTHER ORDERED that Part 22 of the Commission's rules, 47 C.F.R. Section 22.903(f) and Part 64 of the Commission's rules, 47 C.F.R. Section 64.702(d)(3) are REMOVED as set forth in Appendix B hereto.

261. IT IS FURTHER ORDERED that Part 64 of the Commission's rules, 47 C.F.R. Section 64 is AMENDED as set forth in Appendix B hereto, effective 30 days after publication of the text thereof in the Federal Register, unless a notice is published in the Federal Register stating otherwise. The information collections contained within become effective 70 days after publication in the Federal Register, following OMB approval, unless a notice is published in the Federal Register stating otherwise.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

APPENDIX A -- LIST OF PARTIES SUBMITTING COMMENTS OR EX PARTES

Ad Hoc Telecommunications Users Committee (Ad Hoc)
AGI Publishing (AGI)
AirTouch Communications, Inc. (AirTouch)
Alarm Industry Communications Committee (AICC)
ALLTEL Corporate Services, Inc. (ALLTEL)
American Public Communications Council (APCC)
America's Carrier Telecommunications Association (ACTA)
Ameritech Corp. (Ameritech)
Arch Communications Group, Inc. (Arch)
Association for Local Telecommunications Services (ALTS)
Association of Directory Publishers (ADP)
Association of Telemessaging Services International (ATSI)
AT&T Corp. (AT&T)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corporation (BellSouth)
Cable & Wireless, Inc. (CWI)
California Cable Television Association (CCTA)
California Public Utilities Commission (California Commission)
Cincinnati Bell Telephone (CBT)
Comcast Cellular Communications, Inc. (Comcast)
Competition Policy Instititute (CPI)
Competitive Telecommunications Association (CompTel)
Compuserve, Inc. (Compuserve)
Computer Professionals for Social Responsibility (CPSR)
Consolidated Communications, Inc. (Consolidated)
Consumer Federation of America (CFA)
Cox Enterprises, Inc. (Cox)
Direct Marketing Associates (DMA)
Directory Dividends
Equifax, Inc. (Equifax)
Excell Agent Services (Excell Agent)
Excel Telecommunications, Inc. (Excel)
Federal Bureau of Investigation (FBI)
Frontier Corporation (Frontier)
Anthony Genovesi, New York State Assemblyman
GTE Service Corporation (GTE)
Information Industry Association (IIA)
Information Technology Association of America (ITAA)
IntelCom Group (ICG)

Intermedia Communications, Inc. (Intermedia)
LDDS WorldCom Inc. (LDDS Worldcom)
MCI Telecommunications Corporation (MCI)
MFS Communications Company, Inc. (MFS)
MobileMedia Communications, Inc. (MobileMedia)
National Association of Regulatory Utility Commissioners (NARUC)
National Telecommunications and Information Association (NTIA)
National Telephone Cooperative Association and Organization for the Promotion and Advancement of Small Telephone Companies (NTCA/OPASTCO)
New York Clearinghouse Association, Securities Industry Association, Bankers Clearinghouse, and Ad Hoc Telecommunications Users Committee (NYCA)
New York State Department of Public Service (New York Commission)
NYNEX Telephone Companies (NYNEX)
Pacific Telesis Group (PacTel)
Paging Network (PageNet)
Pennsylvania Office of Consumer Advocate (PaOCA)
SBC Communications, Inc. (SBC)
Small Business in Telecommunications, Inc. (SBT)
Southern New England Telephone Company (SNET)
Sprint Corporation (Sprint)
Sunshine Pages (Sunshine)
Telecommunications Industry Association (TIA)
Telecommunications Resellers Association (TRA)
Teleport Communications Group, Inc. (TCG)
Public Utility Commission of Texas (Texas Commission)
United States Telephone Association (USTA)
U S WEST, Inc. (U S WEST)
Virgin Islands Telephone Corporation (VITELCO)
Washington Utilities and Transportation Commission (Washington Commission)
Wireless Technology Research, L.L.C. (WTR)
Yellow Pages Publishers Association (YPPA)

APPENDIX B -- FINAL RULES

For the reasons set out in the preamble, 47 CFR Parts 22 and 64 are amended as follows:

1. AUTHORITY: 47 U.S.C. 1-5, 7, 201-05, 222.

PART 22 -- PUBLIC MOBILE SERVICES

2. § 22.903 [Remove].

PART 64 -- MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

3. The table of contents for Part 64 is revised to read as follows:

* * * * *

Subpart U -- Customer Proprietary Network Information

4. § 64.702 [Amended]

In § 64.702, remove paragraph (d)(3).

5. Subpart U is added to read as follows:

Subpart U -- Customer Proprietary Network Information

§ 64.2001 Basis and purpose.

(a) *Basis.* These rules are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose.* The purpose of these rules is to implement section 222 of the Communications Act of 1934, as amended, 47 U.S.C. 222.

§ 64.2003 Definitions.

Terms used in this subpart have the following meanings:

(a) *Affiliate.* An affiliate is an entity that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another entity.

(b) *Customer.* A customer of a telecommunications carrier is a person or entity to which the telecommunications carrier is currently providing service.

(c) *Customer proprietary network information (CPNI).* Customer proprietary network information (CPNI) is (1) information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the customer-carrier relationship; and (2) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier. Customer proprietary network information does not include subscriber list information.

(d) *Customer premises equipment (CPE).* Customer premises equipment (CPE) is equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

(e) *Information service.* Information service is the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

(f) *Local exchange carrier (LEC).* A local exchange carrier (LEC) is any person that is engaged in the provision of telephone exchange service or exchange access. For purposes of this subpart, such term does not include a person insofar as such person is engaged in the provision of commercial mobile service under 47 U.S.C. 332(c).

(g) *Subscriber list information (SLI).* Subscriber list information (SLI) is any information (1) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and (2) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

(h) *Telecommunications carrier.* A telecommunications carrier is any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in 47 U.S.C. 226(a)(2)).

§ 64.2005 Use of Customer Proprietary Network Information Without Customer Approval

(a) Any telecommunications carrier may use, disclose, or permit access to CPNI for the purpose of providing or marketing service offerings among the categories of service (*i.e.*, local, interexchange, and CMRS) already subscribed to by the customer from the same carrier, without customer approval.

(1) If a telecommunications carrier provides different categories of service, and a customer subscribes to more than one category of service offered by the carrier, the carrier is permitted to share CPNI among the carrier's affiliated entities that provide a service offering to the customer.

(2) If a telecommunications carrier provides different categories of service, but a customer does not subscribe to more than one offering by the carrier, the carrier is not permitted to share CPNI among the carrier's affiliated entities.

(b) A telecommunications carrier may not use, disclose, or permit access to CPNI to market to a customer service offerings that are within a category of service to which the customer does not already subscribe to from that carrier, unless the carrier has customer approval to do so, except as described in paragraph (c) of this section.

(1) A telecommunications carrier may not use, disclose, or permit access to CPNI derived from its provision of local service, interexchange service, or CMRS, without customer approval, for the provision of CPE and information services, including call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, and Internet access services. For example, a carrier may not use its local exchange service CPNI to identify customers for the purpose of marketing to those customers related CPE or voice mail service.

(2) A telecommunications carrier may not use, disclose or permit access to CPNI to identify or track customers that call competing service providers. For example, a local exchange carrier may not use local service CPNI to track all customers that call local service competitors.

(3) A telecommunications carrier may not use, disclose or permit access to a former customer's CPNI to regain the business of the customer who has switched to another service provider.

(c) A telecommunications carrier may use, disclose, or permit access to CPNI, without customer approval, as described in this subparagraph.

(1) A telecommunications carrier may use, disclose, or permit access to CPNI, without customer approval, in its provision of inside wiring installation, maintenance, and repair services.

(2) CMRS providers may use, disclose, or permit access to CPNI for the purpose of conducting research on the health effects of CMRS.

(3) LECs and CMRS providers may use CPNI, without customer approval, to market services formerly known as adjunct-to-basic services, such as, but not limited to, speed dialing, computer-provided directory assistance, call monitoring, call tracing, call blocking, call return, repeat dialing, call tracking, call waiting, caller I.D., call forwarding, and certain centrex features.

§ 64.2007 Notice and Approval Required for Use of Customer Proprietary Network Information

(a) A telecommunications carrier must obtain customer approval to use, disclose, or permit access to CPNI to market to a customer service to which the customer does not already subscribe to from that carrier.

(b) A telecommunications carrier may obtain approval through written, oral or electronic methods.

(c) A telecommunications carrier relying on oral approval must bear the burden of demonstrating that such approval has been given in compliance with the Commission's rules.

(d) Approval obtained by a telecommunications carrier for the use of CPNI outside of the customer's total service relationship with the carrier must remain in effect until the customer revokes or limits such approval.

(e) A telecommunications carrier must maintain records of notification and approval, whether oral, written or electronic, for at least one year.

(f) Prior to any solicitation for customer approval, a telecommunications carrier must provide a one-time notification to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI.

(1) A telecommunications carrier may provide notification through oral or written methods.

(2) Customer notification must provide sufficient information to enable the customer to make an informed decision as to whether to permit a carrier to use, disclose or permit access to, the customer's CPNI.

(i) The notification must state that the customer has a right, and the carrier a duty, under federal law, to protect the confidentiality of CPNI.

(ii) The notification must specify the types of information that constitute CPNI and the specific entities that will receive the CPNI, describe the purposes for which CPNI will be used, and inform the customer of his or her right to disapprove those uses, and deny or withdraw access to CPNI at any time.

(iii) The notification must advise the customer of the precise steps the customer must take in order to grant or deny access to CPNI, and must clearly state that a denial of approval will not affect the provision of any services to which the customer subscribes.

(iv) The notification must be comprehensible and not be misleading.

(v) If written notification is provided, the notice must be clearly legible, use sufficiently large type, and be placed in an area so as to be readily apparent to a customer.

(vi) If any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.

(vii) A carrier may state in the notification that the customer's approval to use CPNI may enhance the carrier's ability to offer products and services tailored to the customer's needs. A carrier also may state in the notification that it may be compelled to disclose CPNI to any person upon affirmative written request by the customer.

(viii) A carrier may not include in the notification any statement attempting to encourage a customer to freeze third party access to CPNI.

(ix) The notification must state that any approval, or denial of approval for the use of CPNI outside of the service to which the customer already subscribes to from that carrier is valid until the customer affirmatively revokes or limits such approval or denial.

(3) A telecommunications carrier's solicitation for approval must be proximate to the notification of a customer's CPNI rights.

(4) A telecommunications carrier's solicitation for approval, if written, must not be on a document separate from the notification, even if such document is included within the same envelope or package.

§ 64.2009 Safeguards Required for Use of Customer Proprietary Network Information

(a) Telecommunications carriers must develop and implement software that indicates within the first few lines of the first screen of a customer's service record the CPNI approval status and reference the customer's existing service subscription.

(b) Telecommunications carriers must train their personnel as to when they are and are not authorized to use CPNI, and carriers must have a express disciplinary process in place.

(c) Telecommunications carriers must maintain an electronic audit mechanism that tracks access to customer accounts, including when a customer's record is opened, by whom, and for what purpose. Carriers must maintain these contact histories for a minimum period of one year.

(d) Telecommunications carriers must establish a supervisory review process regarding carrier compliance with the rules in this subpart for outbound marketing situations and maintain records of carrier compliance for a minimum period of one year. Specifically, sales personnel must obtain supervisory approval of any proposed outbound marketing request.

(e) A telecommunications carrier must have a corporate officer, as an agent of the carrier, sign a compliance certificate on an annual basis that the officer has personal knowledge that the carrier is in compliance with the rules in this subpart. A statement explaining how the carrier is in compliance with the rules in this subpart must accompany the certificate.

STATEMENT OF COMMISSIONER SUSAN NESS
DISSENTING IN PART

Re: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information

I agree with most elements of this order but not with the decision to overturn a portion of the Commission's prior ruling in the "Non-Accounting Safeguards" order. I believe it is possible to implement Section 222 in a manner that is fully consistent with Section 272. But the approach taken by the majority creates an unnecessary conflict between the two sections and then resolves that conflict in a manner that undermines the structural separation safeguards crafted by Congress.

Section 272 spells out in detail the relationship between a Bell operating company and any structurally separate affiliate that is created to provide interLATA telecommunications services and interLATA information services. The key rules can be summarized succinctly. Under Section 272(a)(1)(A), the interLATA affiliate is required to be "*separate* of any operating company entity . . . ." Under Section 272(b)(1)&(5), the affiliate is required to "*operate independently*" of the operating company and to conduct all transactions with the operating company "on an *arm's length basis* . . . ." Under Section 272(c)(1), the operating company "*may not discriminate*" in favor of the affiliate "*in the provision* or procurement *of* goods, services, facilities, or *information*."

The sole exception to the nondiscrimination requirement is in Section 272(g)(2). It specifies that the operating company may "market and sell" the interLATA services provided by the interLATA affiliate.[749] This exception addresses a single setting in which the relationship between the operating company and the separate affiliate is free from the nondiscrimination requirement of Section 272(c); it does not alter Section 272(a)&(b)'s requirements for a *separate* entity which *operates independently* and on an *arm's length basis*. Yet, despite the care Congress took to fashion a narrow exception to the general principles of structural separation, the majority's decision today irretrievably blurs the lines between the two entities.[750]

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[749] By virtue of Section 272(g)(3), Section 272(g)(1) also is exempt from the nondiscrimination requirement of Section 272(c)(1). But Section 272(g)(1) only permits the interLATA affiliate to market and sell the telephone exchange services of the operating company so long as nonaffiliated may do so as well. Thus, this particular paragraph has its own nondiscrimination requirement.

[750] It is telling that the majority does not read Section 222 as being the comprehensive and exclusive provision pertaining to the use to which a Bell operating company may put one narrow category of CPNI -- that relating to calls to alarm monitoring service providers. In this context, the majority acknowledges the need to comply with a distinct statutory safeguard: Section 275(d). I find it difficult to understand why Section 222 should be construed in a manner that respects Section 275 but ignores Section 272.

Under today's decision, the Bell operating company and its interLATA affiliate are treated as separate carriers for purposes of CPNI. Fine so far. But, if the operating company successfully sells the interLATA services of its affiliate to a customer, or even if the separate affiliate independently sells a customer on its long distance services, the order treats both carriers as having collapsed into one. *Both* carriers will be deemed to have a "total service relationship" with the customer that encompasses local and interLATA service. *Both* may access the entire range of information available through the customer's account records -- information about the destination of the customer's calls, their duration, and their time of day. *Both* may use this information to devise any offer encompassing either or both services.

This approach does not square with the statutory scheme in which the Bell operating company and its separate affiliate are deemed to be separate and independent entities. If MCI, AT&T, or any one of a hundred other long distance companies successfully wins the interLATA business of a customer, it does not automatically acquire the right and the opportunity to access the customer's *local* service information. Yet, under the approach adopted by the majority today, if the structurally separated affiliate of a Bell operating company wins the interLATA business of a customer, it *does* automatically acquire the right and the opportunity to access the customer's local service information.[751] I don't think this discrepancy is what Congress intended.

Consider another example. Under Section 272(g)(1), the structurally separate affiliate may market the local service offerings of its affiliated operating company, provided that other entities may also do so. So, if a Bell operating company's structurally separated affiliate successfully markets a local service offering of the operating company (say, in selling the customer a second line), the majority's approach would say that the separate affiliate now has the right automatically to access the operating company's entire record on the customer for the purpose of marketing additional services. But if an unaffiliated entity, exercising the same right to sell the same service on behalf of the same operating company, successfully sells the operating company's local service, it does *not* acquire the same rights. Again, the result is anomalous.

It bears emphasis that the issue here concerns solely the rights that the Bell operating companies and their structurally separated affiliates will have without customer approval. Under Section 222(c)(2), those customers who wish to empower any carrier to access any of their private information may make arrangements to that effect. But, absent an affirmative decision by the customer, I read Section 272 as precluding the kind of preferred relationship between a Bell operating company and its structurally separated affiliate that is created by today's decision.

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[751] The operating company and the structurally separated affiliate will apparently share access to a common computer system, at least for certain customers' records. This of course gives rise to issues of discrimination and cost allocation that can be avoided by maintaining the structural separation Congress specified.