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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE 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	)	

REPLY COMMENTS OF BELL ATLANTIC[1] ON FURTHER NOTICE OF PROPOSED RULEMAKING

The parties that ask the Commission to impose specific restrictions on the use of other carriers' confidential information fail to show that additional regulations are needed to protect that information. On the contrary, Congress itself recognized the sensitivity of carrier-specific information when it enacted Section 222(a) and (b) and already incorporated into the statute the restrictions that it concluded would adequately protect that information. Imposing yet another level of agency-imposed restrictions would serve only to increase unnecessarily the regulatory burden on all carriers.

For example, forcing all carriers to change their entire database systems to wall off carrier-specific data from retail sales and marketing personnel would impose an enormous

[1] The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

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burden and would do so in the absence of any demonstrated need.[2] *See* TRA at 10. Likewise, imposing "strict liability" with a pre-determined heavy monetary penalty assumes that all "violations," no manner how minor, should be sanctioned equally. *See* TRA at 13-14, Intermedia at 9-10, Sprint at 7. But a mistake by one employee that causes little or no competitive harm certainly does not rise to the seriousness of a company-sanctioned campaign to misuse carrier data and should not be treated the same. Nonetheless, that would be the result of adopting their proposals.[3]

Instead of adopting specific rules governing the use of carrier-specific information, the Commission should confirm that its new streamlined formal complaint rules apply to complaints to enforce the restrictions incorporated into the Act. *See Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, 12 FCC Rcd 22,497 (1997). If, in adjudicating a complaint, the Commission determines that a carrier is intentionally engaging in a pattern of misuse of carrier information, it can impose severe sanctions on the offending carrier. If, however, an employee or two simply made a mistake, especially where any problems have been quickly remedied, there is no need to throw the book at the carrier. By letting the punishment fit the crime, the Commission can

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[2] The Commission cites figures from U.S. WEST that such a change could cost upwards of $100 million. *Second Report and Order and Further Notice of Proposed Rulemaking*, FCC 98-27, n.687 (rel. Feb. 26, 1998) ("Order").

[3] Intermedia compares misuse of carrier data to slamming, where the Commission has imposed special rules shifting the burden of proof and assessing stiff fines for each violation. Intermedia at 10. In the case of slamming, however, there was a known, broad pattern of abuse which harmed tens of thousands of consumers. Here, there are merely undocumented allegations of violations, with no showing of competitive harm. The need for similar special rules has, therefore, not been shown.

enforce the provisions of Section 222(a) and (b) without the regulatory overkill that some parties seek.

MCI agrees that additional safeguards are not needed, MCI at 16-17, but it urges the Commission to create a rebuttable presumption that a carrier misused another carrier's information if it obtained the same information first from the other carrier and then from a public source. *Id.* at 13. Under MCI's proposal, a carrier that happens to have a database containing carrier-specific information that is also available publicly would be subject to penalty whenever it uses publicly-available information. This would be true, moreover, for the very same actions, using the same information, that would be entirely proper if it did not have that database. This is ludicrous. Contrary to MCI's suggestion, use of public information should never be sanctionable under Section 222, no matter how the same information was previously obtained.

Equally ludicrous is MCI's claim that billing information qualifies as carrier-specific information whenever a local exchange carrier bills for an interexchange carrier. MCI would prohibit an exchange carrier from using that information, <u>even with customer consent</u>, to market a service outside the customer's total service received from the exchange carrier. MCI at 14. Bell Atlantic understands that MCI itself purchases bills from customers that show the calls that the customers placed with carriers other than MCI, then uses that information to offer services to the customers that are customized to their past calling history. Under MCI's reading, however, local exchange carriers would be prohibited from doing the exact same thing, just because they provide billing and collection services for interexchange carriers.

This one-sided view of the world not only defies common sense and competitive neutrality, but it is contrary to the Act. The statutory definition of "<u>customer</u> proprietary network information" includes information on a customer's bills "pertaining to ... telephone toll service,"

47 U.S.C. § 222(f)(1)(B) (emphasis added). And the Act makes clear that, with the customer's consent, exchange carriers are permitted to use that information to market services other than those from which it was obtained. This is equally true for local exchange carriers as it is for MCI. MCI's proposal would make a mockery of Congressional intent to give the customer control over use of CPNI, because it would deprive the carrier to whom a customer gave consent the ability to use the information as the customer intended.

MCI is also wrong in its claim that information about a customer's presubscribed carrier is "carrier proprietary information under Section 222(b)." MCI at 11 (emphasis added). Again, the Act is clear. The identity of a customer's presubscribed carrier is an integral part of a customer's service and billing records and it therefore "customer proprietary network information" under Section 222(f)(1). As a result, this information is available, with the consent of the customer, for use outside of the service from which it was derived. By contrast, if MCI were correct, Bell Atlantic would violate Section 222(b) simply by answering a customer's question as to the identity of his or her presubscribed carrier, because Bell Atlantic would be prohibited by Section 222(b) from using that information for any purpose except to provide service to the carrier. MCI would thus prohibit Bell Atlantic from giving customers the information needed to detect if they had been slammed or even to remind them of the carrier they had selected.

MCI also claims that carriers should not be allowed to use information that a customer chose another carrier to attempt to win back the customer. MCI at 15-16. Contrary to MCI's claim, however, the public interest is served by allowing carriers to use this information to attempt to retain a customer for a brief period after the customer changes carriers. First, if the change was unauthorized, early contact will allow the customer to detect and remedy the

slamming, without having to wait for the first bill and then adjust the charges imposed by the unauthorized carrier. Second, the right to identify and contact customers who recently left provides a carrier the opportunity to explain pricing plans of which the customer may not have been aware or to detect and remedy service problems that might have caused the customer to change. By making the customer more aware of available competitive choices, the ability to place retention calls may result in lower bills to that customer and could even result in a bidding war for the customer's business.

Moreover, to the extent the Commission is concerned about potential abuses, its concerns could be addressed in a far less onerous way that would preserve much of the procompetitive benefit of permitting carriers to use information of recent departures to place retention calls to consumers. In fact, the Commission could fully address this concern through the simple expedient of limiting the use of the information for customer retention to a finite period of time after the customer switches carriers.[4]

[4] Bell Atlantic intends to address this issue in its upcoming petition for partial reconsideration of the Order, but for present purposes it is sufficient to note that any legitimate concerns can be addressed in far less onerous ways than MCI proposes here.

Accordingly, the Commission should be vigilant in enforcing the statutory restrictions against carrier misuse of other carriers' information, but no additional regulations are needed for this purpose.

Respectfully Submitted,

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April 14, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of April, 1998 a copy of the foregoing "Reply Comments of Bell Atlantic on Further Notice of Proposed Rulemaking" was served on the parties on the attached list.

Tracey M. DeVaux

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* Via hand delivery.

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