

Before the
 FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

RECEIVED

MAY - 8 1998

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of

Telecommunications Carriers' use of Customer Proprietary Network Information and Other Customer Information)	CC Docket No 96-115
)	
Cellular Telecommunications Industry Association Request for Deferral and Clarification)	DA 98-836
)	
GTE Service Corporation, and its Affiliated Domestic Telecommunications, Wireless, and Long Distance Companies)	
Petition for Temporary Forbearance or, In the Alternative, Motion for Stay)	

COMMENTS OF THE
 NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits the following comments in response to the Commission's *Public Notice*, DA 98-836 released on May 1, 1998, inviting comments on the above captioned request and petition. NTCA is a national association of approximately 500 local exchange carriers ("LECs"). These LECs provide telecommunications services to end users and interexchange carriers throughout rural America. The services provided by the companies include cellular and personal communications services and other wireless services.

NTCA supports in part the Cellular Telecommunications Industry Association's ("CTIA's") Request for Deferral and Clarification. NTCA agrees with CTIA that the Commission should confirm that CPNI refers only to information about the type and amount of service customers purchase, not the names and addresses of customers themselves. NTCA also

National Telephone Cooperative Association

May 8, 1998

No. of Copies rec'd 0+12
 List ABCDE

supports GTE Service Corporation's ("GTE's") Petition for Temporary Forbearance or, in the Alternative, Motion for Stay in its entirety.

As CTIA points out, the CPNI restrictions were enacted to protect a customer's interests in information about the type and amount of services they purchase. Congress very specifically defined CPNI in Section 222(f)(1) as "(A) information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications carrier . . . ; and (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier." The plain language of the definition indicates that Congress intended to limit the use of information about the service used and to whom, where, when, and how often a consumer places a call, not the fact that the caller is a subscriber. Consumers' privacy is not invaded unless names and addresses are associated with calling data that reveals information about calling habits.

Defining CPNI to include subscribers' names and addresses would significantly hinder a carrier's ability to communicate with its subscribers. Such a restriction could be read to prohibit billing inserts and mass mailings. Subscribers would be denied the opportunity to learn about new services they may want and which may only be available from their existing provider. Therefore, NTCA agrees with CTIA and supports its position that the Commission should clarify that CPNI does not include the name and billing address of a subscriber.

NTCA also agrees with GTE that certain provisions of the *Second Report and Order*¹ will

¹ Telecommunications Carriers' Use of Customer Proprietary network Information and Other Customer Information, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-115 (released February 26, 1998), 63 F.R. 20326 (April 24, 1998) ("*Second Report and Order*").

cause immediate and irreparable harm to consumers and carriers with no offsetting public interest benefits. There is good cause for the Commission to temporarily forbear from applying section 222, or stay portions of the *Second Report and Order*.

The Commission's restriction on the use of CPNI to market CPE will cause customer confusion. NTCA's members often provide their wireless services as packages. For example, the customer gets a handset or pager when it signs up for service. The customer views the equipment as part of the total service. The consumer expects to be notified when there are equipment upgrades available to suit his needs.

Furthermore, as wireless use becomes more popular, providers are making the transition from analog to digital technology. As GTE points out, the digital transition allows high volume users to switch from analog to digital and frees up the analog for low volume or "emergency" users. To make this transition as smooth as possible, carriers need to have the ability to target the high volume users.

NTCA also agrees with GTE that the Commission should temporarily forbear from restricting the use of CPNI for the marketing of advanced services. New services often involve new equipment and the use of CPNI may be necessary for market development. The temporary forbearance is warranted pending the development of a more complete record on the subject.

The Commission concluded that carriers need express approval from their subscribers in order to use CPNI to market voice mail, store-and-forward, and short message services. The Commission should temporarily forbear from, or stay, the application of this restriction. Many, if not most, customers consider voice-mail and wireless short message service as part of their

telecommunications service. They do not know some services are telecommunications services and others are not.

The Commission considers call waiting and call forwarding as necessary to, or used in the provision of, telecommunications service, but concludes that voice mail or short message services are not necessary to, or used in the provision of, telecommunications service. The Commission makes the distinction based on the technology used, rather than the function of the services. As GTE points out, call waiting and call forwarding allow the communications path to reach the customer when normal reception is unavailable. Voice mail and short message services serve the same function, especially in rural areas where the receiver is often unreachable due to poor radio reception.

The Commission should forbear from, or stay, its anti-win-back rule pending reconsideration. The Commission has concluded that section 222(d)(1) does not authorize a carrier to use CPNI of a former customer. CPNI should be available to carriers whose customers are considering switching carriers. As GTE demonstrates, a customer frequently "shops" for the best deal among competing carriers. In order to remain competitive, a carrier must be able to access the customer's CPNI to determine if there is a plan to better suit the subscriber's needs. The customer benefits in receiving the best deal possible.

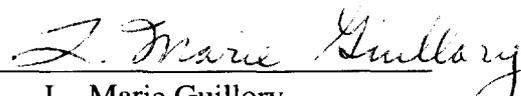
Such logic also applies to a customer who has terminated service. The statute in no way prohibits the use of CPNI of a customer to win back the former customer. The carrier needs the CPNI to contact the customer to determine why the customer switched providers and how to improve future service. NTCA agrees with GTE that the rule prohibiting use of CPNI to win back customers is overbroad. It could be read to prohibit the use of CPNI to win back a customer

who has given the carrier permission to use its CPNI. Section 222(c)(1) permits a carrier to use CPNI with customer approval until the customer revokes his approval.

Forbearance of all of the above-mentioned provisions is permitted under Section 10 of the Act. Such restrictions on the use of CPNI are not needed to prevent unreasonableness or discrimination. The enforcement of the rules is not needed to protect consumers, as there is no reasonable expectation of privacy in these circumstances. Finally, temporary forbearance is in the public interest as all of the provisions ultimately enhance services to the public. A temporary forbearance should be granted until such time as the Commission has acted GTE's Petition for Forbearance, Reconsideration and Clarification, and any other such Petitions as may be filed. The short duration of a temporary forbearance will provide the time necessary for the Commission to examine a more complete record on issues it may not have fully considered before the *Second Order* was issued while at the same time in no way disrupting service to the public.

Respectfully submitted,

NATIONAL TELEPHONE COOPERATIVE
ASSOCIATION

By: 
L. Marie Guillory
(202) 298-2359

By: 
Jill Canfield
(202) 298-2326

Its Attorneys

2626 Pennsylvania Avenue, N.W.
Washington, D.C. 20037

May 8, 1998

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CC Docket No. 96-115 was served on this 8th day of May 1998, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:


Gail C. Malloy

Chairman William E. Kennard
Federal Communications Commission
1919 M Street, N.W., Room 814-0101
Washington, D.C. 20554

Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

Commissioner Michael Powell
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832-0104
Washington, D.C. 20554

Commissioner Harold W. Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

International Transcription Service
1231 20th Street, N.W.
Washington, D.C. 20036

Michael F. Altschul, VP & Esq.
Randall S. Coleman, VP for
Regulatory Policy and Law
Cellular Telecommunications Industry Ass'n
1250 Connecticut Ave., N.W., Suite 200
Washington, D.C. 20036

Ms. Janice Myles
Policy and Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 544-1600G
Washington, D.C. 20554

John F. Raposa, Esq.
GTE Service Corporation
600 Hidden Ridge, HQE03J27
Irving, TX 75038

Gail L. Polivy, Esq.
GTE Service Corporation
1850 M Street, N.W.
Washington, D.C. 20036

R. Michael Senkowski, Esq.
Michael Yourshaw, Esq.
Gregory J. Vogt, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006-2304