consent was asked for in good faith, and given freely. Privacy research and the record in this docket confirm that customers overwhelmingly wish to receive relevant information about AT&T products and services, and are willing to have internal computers search their records to make them relevant offers. Those who do not feel this way can knowingly decline approval, as they have done in the CPNI solicitations to date.

Not only would there be unnecessary expense for AT&T, but it would be both confusing and annoying for the consumer if AT&T were to go back to the same customers already polled on this issue. Accordingly, the CPNI permission already granted should remain in force. To ameliorate any possible concern that these customers receive full notice of their CPNI rights, as contemplated in the *CPNI Order*, before using these consents, AT&T would send customers who had given approval prior to the release date of the Order, a full written notice of their rights, including an explanation that they have a right to withdraw their approval should they wish to do so.

For similar reasons, AT&T also requests that the CPNI approvals obtained from its wireless customers be grandfathered. Again, these approvals were obtained using the Act as a guidepost prior to the release of the *CPNI Order*. Language in AT&T cellular service contracts provides that the customer approves of sharing of service usage information with other divisions of AT&T, unless the customer notifies AT&T Wireless Services in writing. For business customers, the

terms of the contract are specifically negotiated, and, for consumers, this term is part of the written agreement provided to the customer prior to making a decision to enter into a contract for wireless service. This provision, just like the provisions that indicate that the customer will pay a bill when rendered or pay interest on past due amounts, or agree that AT&T can modify the customer's rates on advance notice, are part of the contract to which the customer agrees by signing the contract or using the service. In these circumstances, AT&T should be permitted to continue to rely on the consents previously obtained using this form of contract before the CPNI rules were published.

V. THE COMMISSION SHOULD CLARIFY, AT A MINIMUM, THAT ANY ADDITIONAL STATE NOTIFICATION REQUIREMENTS WILL HAVE PROSPECTIVE APPLICATION ONLY.

Despite the fact that the FCC's *CPNI Order* recognizes that Section 222 extends to both the interstate and intrastate use of CPNI and prescribes a highly detailed set of requirements as to the contents of the notice, it declines to preempt the states and expressly notes that a state could require additional information to be included in a carrier's CPNI notice. *CPNI Order*, paras. 15-18.

The Commission should revisit this conclusion and hold that the FCC notice requirements are preemptive and that a state may not prescribe additional notice requirements. A failure to so hold could put carriers at peril of expending millions of dollars in soliciting customer approval only to find that the notice does not comply with after-the-fact

state-imposed notice requirements. The divergent Caller ID notice requirements attest to this fact.[10]

At a minimum, the Commission should hold that any additional state-specified notice requirements shall have prospective effect only and will not serve to invalidate CPNI approvals previously and validly obtained (or grandfathered by the FCC) in accordance with the Commission's *CPNI Order*.

VI. THE COMMISSION SHOULD RECOGNIZE THE NEED FOR FUTURE EXTRAORDINARY RELIEF WITH RESPECT TO BOC USE OF CPNI IF ANY SECTION 271 GRANT DOES NOT INCLUDE ADEQUATE SAFEGUARDS TO GUARD AGAINST DISCRIMINATORY USE OF CPNI.

The Commission concluded in the *CPNI Order* that Section 222 governs all carriers' use of CPNI and overruled its prior determination that a Bell Operating Company ("BOC") may not discriminate between its affiliate and a third party in the use of information. *CPNI Order*, para. 154. The Commission found that Section 222 sufficiently protects against competitive concerns as to a BOC's sharing of CPNI with its statutory affiliates.

As AT&T and others showed and as Commissioner Ness' dissent confirms, the Commission's holding cannot be reconciled with Section 272 because, under the FCC's total service CPNI approach, while the BOC and its long distance affiliate will be able to share the customer's CPNI without

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[10] Rules and Policies Regarding Calling Number Identification Service -- Caller ID, CC Docket No. 91-281, Order and

(footnote continued on following page)

explicit customer consent, an unaffiliated third party long distance provider would need to obtain the customer's affirmative written consent to gain access to BOC CPNI. Indeed, this would be the case, and a patently discriminatory result, even if the BOC affiliate and the third party were both reselling the BOC's local service. This and other ramifications of the Commission's holding essentially eliminate critical competitive safeguards that Congress enacted to constrain the BOCs' leveraging of their local monopoly power.

Although AT&T could not simultaneously pursue reconsideration and judicial review of the *CPNI Order*, a failure on the part of the Commission to remedy this critical defect will invariably result in court action. Moreover, any Commission failure to enforce Section 272 nondiscrimination requirements in the context of a grant of a BOC application for in-region long distance entry under Section 271, will thus generate the need for immediate extraordinary relief.

(footnote continued from previous page)

Fourth Notice of Proposed Rulemaking, FCC 95-480, released December 1, 1995, paras. 23-27.

CONCLUSION

For the reasons stated above, the Commission should reconsider and clarify its newly adopted CPNI rules.

Respectfully submitted,

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May 26, 1998

APPENDIX A

Prior to November 1996: (Script #1)

AT&T provides many products and services which may be of interest to you. May we have your approval to use information about your current services with us to bring to your attention other products and services offered by AT&T.

November 1996 through February 1997: (Script #2)

AT&T provides many products and services. To help us make you aware of other products and services that AT&T or its affiliated companies may offer now or in the future, may we have your permission to share your account information with one another.

February 1997 through March 1997: (Script #3)

The AT&T family of companies would like to provide you with information about other AT&T products and services from time-to-time. To help us offer you these products and services, may we have your permission to share your account information with one another.

April 1997 through May 1997: (Script #4)

We would like to tell you about other AT&T products and services from time-to-time. To help us do this, may AT&T have your permission to review your account information.

June 1997 through February 1998: (Script #5)

We would like to tell you about other AT&T services from time-to-time. To help us do that, may we review your account information.