CPNI or other customer-specific information derived from its provision of its dominant local service for long distance service marketing purposes without making the same type of information available to competitors under the same circumstances. For an ILEC to favor its own affiliate with local service CPNI and other customer-specific information that is not made available to competitors also provides an "undue or unreasonable preference or advantage" to such affiliate under Section 202(a). It is the exploitation of the ILECs' continuing local market dominance that makes these abuses possible as well as violative of Sections 201(b) and 202(a).

Thus, where a BOC or other ILEC uses CPNI for marketing on behalf of its interexchange affiliate or discloses CPNI to its affiliate, once it has obtained the customer's oral approval for such use or disclosure, Sections 201(b) and 202(a) require that it transmit CPNI electronically to any other entity demonstrating the same approval in the same manner as discussed above for Section 272. MCI argued that Sections 201(b) and 202(a) be applied to all ILECs in this manner,[25] but the Commission did not discuss that issue in the Order. If the Commission does not grant reconsideration on the application of Section 272 to CPNI, it is especially incumbent on the Commission to provide guidance as to whether Sections 201(b) and 202(a) require

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7 FCC Rcd. 565 (1992)(tying of a competitive service with service in which carrier has market power violates Section 201(b) of the Act).

[25] See MCI Further Comments at 12.

nondiscriminatory access to all ILEC CPNI.

If the Commission does decide that Section 272 applies to BOC CPNI, it is still important to apply similar nondiscrimination rules to other ILECs. Given the ILECs' monopoly-derived customer database advantages, it is just as important to prohibit discriminatory access to CPNI for ILEC interexchange operations as it is for BOC Section 272 affiliates. Similarly, as soon as an ILEC uses or discloses non-CPNI customer information to its interexchange affiliate, it should transmit such information to all requesting entities in the manner discussed above.

The abuses committed by the Southern New England Telephone Company (SNET) underscore the need for Commission action on this issue. SNET has actively solicited PIC-freezes from those customers who are presubscribed to SNET's interexchange services but has not shared with other IXCs the list of subscribers with PIC-freezes, causing a significant portion of IXC PIC-change orders to be rejected because of freezes. Meanwhile, where SNET is marketing its long distance services to customers presubscribed to other IXCs and who have freezes on their accounts, SNET simply overrides the PIC-freezes so that the customers can be switched to SNET. SNET is only able to commit such discriminatory abuses on account of its monopoly-derived local customer base advantage, which should be curbed through the application of Sections 201(b) and 202(a) to SNET's discriminatory use of, and refusal to disclose, PIC-freeze

information.

6. A Third-Party Administrator Might be a Useful Mechanism to Ensure Nondiscriminatory Access to CPNI With a Minimum of Ongoing Commission Involvement

As MCI previously suggested,[26] one possible way to deal with the administrative details of nondiscriminatory access to CPNI and other customer information would be to use a third party administrator. A disinterested administrator may be in the best position to ensure that oral approvals have been obtained and that CPNI is transmitted to requesting entities as quickly and in as neutral a manner as possible. Such an administrator would also relieve the Commission of the burden of resolving the inevitable disputes that will arise and other management details that would have to be addressed. A third party administrator has worked well in the management of 800 number portability, and that experience could be applied in this context.

C. The Commission at Least Should Confirm its Previous Conclusion That CPNI and Other Customer Information Constitutes a UNE Under Section 251(c)(3)

Whether or not the Commission reconsiders its decision on nondiscriminatory access to CPNI, it should, at the very least, specifically reconfirm that CPNI and other customer information constitutes "information ... used in the ... provision of a

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[26] See MCI February 9 ex parte at 2.

telecommunications service"[27] and thus an unbundled network element (UNE) that BOCs and other ILECs must provide to all requesting carriers under Section 251(c)(3) of the Act. As in the case of the application of Section 272 to non-CPNI, the Commission indicated in the Order that this was the case,[28] but it would be preferable if the Commission spelled out the implications of carriers' Section 251 rights to CPNI and other customer information.

Accordingly, the Commission should elaborate on its statements in the Order by explicitly concluding, on reconsideration, that all customer-specific information constitutes a UNE subject to the obligations set forth in the Local Competition Order[29] and the Act. Thus, ILECs should continue to be required to honor CPNI disclosure provisions in their interconnection agreements with CLECs and should not be permitted to discontinue such disclosure. Moreover, to the extent they have not already done so, ILECs should be required to negotiate, as part of such agreements, provisions ensuring that

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[27] Section 3(29) of the Act, 47 U.S.C. § 153(29).

[28] Order at ¶ 166.

[29] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996), aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC, 117 F.3d 1068 (8th Cir. 1997), vacated in part on reh'g sub nom. Iowa Utilities Bd. v. FCC, 120 F.3d 753, further vacated in part sub nom. California Public Utilities Comm'n v. FCC, 124 F.3d 934, writ of mandamus issued sub nom. Iowa Utilities Bd. v. FCC, No. 96-3321 (8th Cir. Jan. 22, 1998), petition for cert. granted, Nos. 97-826, et al. (U.S. Jan. 26, 1998)(subsequent history omitted).

an ILEC's use or disclosure of CPNI automatically triggers requesting carriers' access to CPNI under the same terms and conditions. If, for example, the ILEC uses or discloses CPNI with customer approval, requesting carriers should have nondiscriminatory real time electronic access to CPNI with customer approval, in the same manner as discussed above.

It follows from the status of CPNI as a UNE that no Section 271 authorization for in-region interLATA service may be granted to a BOC unless it has negotiated terms and conditions for the nondiscriminatory provision of CPNI and other customer information to all requesting carriers in accordance with the requirements of Section 251(c)(3) and 252(d)(1), as required by the checklist item in Section 271(c)(2)(B)(ii), and is continuing to honor such commitments. The Commission should so state in its reconsideration order. Unless the Commission puts teeth into Section 251(c) in this manner, the BOCs might ignore its finding that they "may also be subject to obligations under section 251 to disclose customer information ... upon the oral approval of customers."[30]

II. THE COMMISSION SHOULD RECONSIDER ITS DECISION LIMITING THE COVERAGE OF SECTION 222(d)(1)

A. Background and Decision

Section 222(d)(1) allows CPNI to be used or disclosed "to initiate, render, bill and collect for telecommunications

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[30] Order at ¶ 166.

services." MCI argued that this provision allows one carrier, such as an ILEC, to disclose CPNI to another carrier, such as an IXC or a competitive LEC (CLEC), in order for the receiving carrier to provide service to a particular customer. MCI also argued that the same nondiscrimination rules discussed above should apply to such disclosure of information under Section 222(d)(1), such that if an ILEC discloses CPNI to its interexchange affiliate in order for the affiliate to initiate service, Section 272 (in the case of a BOC) and Sections 201(b) and 202(a) (in the case of all ILECS) require that the BOC or other ILEC also disclose CPNI to any requesting entity for the purpose of initiating service.

The Commission rejected MCI's position, although somewhat muddling the two issues of the coverage of Section 222(d)(1) and nondiscrimination, in holding that the term "initiate" in Section 222(d)(1) does not require CPNI to be disclosed to a competing carrier that has "won" a customer. The Commission explained that this provision only applies to carriers already possessing CPNI, not to carriers seeking access to it.[31]

B. The Commission's Decision Serves None of the Goals of Section 222 and is Not Compelled by the Statutory Language

MCI respectfully disagrees and requests that the Commission reconsider its decision on this issue. The competitive goals of Section 222 would be advanced more effectively if subsection

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[31] Order at ¶ 84.

(d)(1) were interpreted to permit carriers to disclose CPNI to other carriers in order to initiate service to particular customers, and the language of that provision would allow such a reading.

In many situations, where a carrier has already won a customer without the benefit of local service CPNI, or the use of any CPNI at all, the carrier still needs local service CPNI to install and commence service properly. A CLEC that has won a customer's local service business needs all of the local service CPNI that the ILEC used to install and provide service and to audit and verify charges. Typically, ILECs insist that a CLEC specify all of the details of a customer's local service in placing a local service resale order; it is not sufficient for the CLEC to request that the ILEC provide the underlying service "as is" for resale.

Thus, installation of any type of service is virtually impossible without the ILEC's entire customer record. Anything that inhibits or obstructs the initiation of a competitive service that a customer has chosen is clearly detrimental to competition. There could not possibly be anything more essential to the development of competition than enabling competitive service providers to initiate service to their customers.

The Commission's decision, however, burdens that initiation by requiring that the competitive service provider that has won

obtain his local service CPNI from the ILEC.[32] Since the customer typically would assume a seamless transfer, the request for such approval itself would be disquieting, since it would suggest to the customer that the new carrier is unqualified. Customers that are switching local carriers often assume that the new carrier will know what class of service they have and which options they have chosen, such as call waiting, and will expect the new carrier to be able to provide exactly the same local service package. That the new carrier does not know these details can be extremely offputting to customers. Thus, the Commission's approach chills competitive marketing efforts.

At the same time, requiring that the successful carrier seek the customer's approval serves none of the statutory purposes of customer control and privacy under Section 222(c)(1) that ordinarily necessitate such approval. The customer has already chosen the new carrier and thereby intends that the new carrier have whatever information it needs to initiate the desired service. It is the new carrier that has the "existing service relationship" with the customer[33] and thus should not need approval to use his CPNI. Thus, requiring such approval in these circumstances chills competition and serves no customer privacy or control goals.

Moreover, the Commission's contrarian approach to the interpretation of Section 222(d)(1) is not compelled by the

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[32] Order at ¶ 84.

[33] See, e.g., Order at ¶ 4.

statutory language. That provision states that nothing prohibits a carrier from "using, disclosing, or permitting access to" CPNI "to initiate, render, bill and collect" for services. The phrase "disclosing, or permitting access to" CPNI strongly suggests that the carrier possessing CPNI may disclose it to another entity.[34] The phrase "to initiate, render, bill and collect," in turn, does not necessarily refer only to the carrier "disclosing or permitting access to" the CPNI. It would not be ungrammatical or illogical for carrier A to disclose CPNI to carrier B for the latter "to initiate, render, bill and collect for" service.

It should also be noted that subparagraph (1) of Section 222(d) does not specify or limit the entity that is intended to be enabled thereby to initiate service, in contrast to subparagraph (2), which allows disclosure or use of CPNI "to protect the rights or property of the carrier, or to protect users of those services and other carriers from" fraud. Subparagraph (2) thus suggests that where Congress intended to specify which carrier or carriers were the focus of Section 222(d), it said so. Since Section 222(d)(1) contains no such limitation, the language of that provision is perfectly compatible with the interpretation that it authorizes one carrier to disclose CPNI to another, without customer approval, to enable the latter to initiate service.

Accordingly, the Commission should reverse its decision that

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[34] Cf. Order at ¶ 84 (Section 222(c)(1) permits carriers to "disclose" CPNI to other carriers with customer approval).

Section 222(d)(1) only allows a carrier that already has CPNI to use it to initiate service without customer approval. Interpreting that provision to allow one carrier to disclose CPNI to another to enable the latter to initiate service without customer approval is consistent with the statutory language, would carry out the competitive goals of Section 222 far more effectively and would be more in keeping with customer expectations and thus Section 222's customer control and privacy goals.

C. Alternatively, Section 222(c)(1) Should be Interpreted to Allow One Carrier to Disclose CPNI to Another Without Customer Approval to Enable the Latter to Initiate Service

Whether or not the Commission reconsiders its decision on the coverage of Section 222(d)(1), it should, in any event, find that Section 222(c)(1) authorizes a carrier to disclose CPNI to another to initiate the same category of service without customer approval. That provision allows the disclosure of CPNI by a carrier "in its provision of ... the ... service from which such information is derived." Where a carrier, such as an ILEC, discloses CPNI to another carrier, such as a CLEC, in order for the latter to initiate the same category of service as the former, such disclosure can be said to be "in [the disclosing carrier's] provision of" service.

Such disclosure is a necessary element in transitioning the customer to the new carrier and thus is an important aspect of the final stages of the disclosing carrier's provision of

service. Just as it is part of a relay runner's mission to pass the baton to the next runner, a carrier's disclosure of CPNI to enable another carrier to continue providing the same service is an important part of the disclosing carrier's total service offering to the customer. Accordingly, the Commission should find, in any event, that Section 222(c)(1) authorizes such disclosure of CPNI.

D. Nondiscrimination Rules Should Also Apply to Carriers' Disclosure of CPNI Without Customer Approval for the Initiation of Service

Similar nondiscrimination rules should apply, through Sections 272, 201(b) and 202(a), to the use or disclosure of CPNI without customer approval to initiate service as MCI advocated in Part I above in the customer approval context. Moreover, the competitive goals of Section 222 would also be furthered if nondiscrimination rules were applied such that BOCs and other ILECs could not make CPNI available to their affiliates without customer approval to enable them to initiate service while requiring that other carriers secure such approval as a prerequisite for access to CPNI in order to initiate service. Thus, where a BOC or other ILEC uses CPNI, or discloses CPNI to its affiliate, in order to initiate service, without the customer's approval under Section 222(d)(1), it must provide CPNI to any other requesting carrier needing it to initiate service. Thus, where CPNI is necessary for a CLEC to initiate local service to a customer it has won, nondiscrimination requires that

the BOC or other ILEC turn over the customer's CPNI immediately upon notification that the CLEC has won the customer's local business, since the BOC or CLEC has been using such information to "render, bill, and collect for" local service to that customer.

The need for strict nondiscrimination rules in this context is evidenced by the ILECs' behavior in responding to CLEC resale orders. As noted above, ILECs typically insist that the CLEC provide every detail of the customer's current local service in submitting a resale order. Sometimes, however, the same ILECs will then refuse to turn over the customer records that would provide all of the information that the CLEC needs to place the order. This artificial and unnecessary Catch-22 created by the ILECs is intended for the sole purpose of obstructing local competition, and is a highly successful tactic. It is therefore not enough to interpret Section 222(d)(1) to allow one carrier to disclose CPNI to another to enable the latter to initiate service without customer approval. Nondiscrimination is required so that BOCs and other ILECs will be required to do so if they turn over CPNI without customer approval to their affiliates to enable the latter to initiate service.

As also discussed in Part I above, the request and CPNI should be transmitted electronically in order to ensure a real time, nondiscriminatory response to requests. If it becomes necessary for the requesting carrier to demonstrate that the customer has chosen its service, and that CPNI is therefore

necessary to initiate service, it should be permitted to do so by any reasonable means.

Moreover, such nondiscrimination rules should be applied to a BOC's or other ILEC's use of CPNI in its own "render[ing], bill[ing] and collect[ing] for" local service or disclosure of CPNI in order to initiate service, without customer approval, no matter how Section 222(d)(1) is interpreted. Certainly, in the case of a BOC that discloses CPNI to its Section 272 affiliate without customer approval to enable the affiliate to initiate service, Section 272(c)(1) would require that CPNI also be provided in a nondiscriminatory manner to any other entity requesting it for the same purpose.

As explained above, the Section 272 requirement satisfies the "[e]xcept as required by law" clause in Section 222(c)(1) and thus requires disclosure of CPNI to the BOC's Section 272 affiliate and any other requesting entity on an absolutely nondiscriminatory basis. Where the BOC discloses CPNI, or any other customer information, to the Section 272 affiliate without customer approval to enable the affiliate to initiate service, Section 272(c)(1) thus requires disclosure of such information without customer approval to any other entity demonstrating that it has won a new customer and needs CPNI to initiate service.

The same requirement should be applied to the ILECs through Sections 201(b) and 202(a) in order to avoid the same exploitation of a monopoly-derived advantage that is discussed in Part I above with respect to nondiscriminatory access to CPNI

with customer approval. The same nondiscrimination rules should be applied to require that any CPNI used by a BOC or ILEC to render, bill and collect for local service should be turned over to CLECs to enable them to initiate service. Since nondiscrimination requires disclosure of CPNI to all requesting entities in these circumstances, the Commission should so find, irrespective of its interpretation of the disclosure that is allowed under Section 222(c)(1) or (d)(1).

The third party administrator proposed in Part I for the nondiscriminatory disclosure of CPNI with customer approval might also be a useful way to handle the nondiscriminatory disclosure of CPNI for the initiation of service without approval. Apart from the customer approval issue, the details of the two sets of requirements will be virtually the same, increasing the usefulness and efficiency of such a neutral administrator.

E. If the Commission Does Not Grant Any Relief on the Issue of Disclosure of CPNI to Initiate Service, it Should Allow Carriers to Notify Customers That Failure to Approve Such Disclosure May Disrupt the Installation of Service

If the Commission does not grant reconsideration on the interpretation of Section 222(d)(1) or otherwise require CPNI disclosure to enable carriers to initiate service, carriers will need customer approval to obtain an ILEC's CPNI to initiate service, as discussed above. In that case, MCI requests that the Commission modify its notification requirements to make such approvals more likely.

In a situation where a carrier needs an ILEC's CPNI to initiate service, failure to obtain the CPNI will almost certainly have a negative impact on the timely initiation of proper service. Carriers in that situation should be allowed to explain such problems to customers in seeking their approval to obtain CPNI from the customer's ILEC. That would require a slight modification in the requirement that notification of a customer's CPNI rights should not imply that approval is necessary to ensure the continuation of services to which the customer subscribes or the proper servicing of the customer's account.[35] In the situation where CPNI is necessary to initiate service, approval is absolutely necessary for the proper servicing of the account, and customers should be so notified in order to make an informed choice concerning approval.

F. The Need for an Unequivocal Statement That CPNI is a UNE Under Section 251(c)(3) is Equally Vital for Access to CPNI to Initiate Service

Whether or not the Commission grants reconsideration on this issue, MCI's request in Part I above that the Commission elaborate on its conclusion that CPNI is a UNE also applies to the use or disclosure of CPNI to initiate service. Thus, if a BOC or other ILEC uses CPNI to initiate, render, bill and collect for local service or discloses CPNI to an affiliate for the initiation of service without customer approval, requesting carriers should be given access to CPNI for the same purpose and

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[35] Order at ¶ 138.

under the same conditions under Section 251(c)(3). As discussed in Part I, ILECs should continue to be required to honor CPNI disclosure provisions in their interconnection agreements with CLECs and should not be permitted to discontinue such disclosure. Moreover, to the extent they have not already done so, ILECs should be required to negotiate, as part of such agreements, provisions ensuring that where a requesting carrier needs CPNI to initiate local service, ILECs must disclose such CPNI immediately upon request without customer approval. Such disclosure should be implemented on a nondiscriminatory real time electronic access, in the same manner as discussed above.

III. THE "AUDIT TRAIL" REQUIREMENT IS EXCESSIVELY BURDENSOME AND, AS SET FORTH IN THE ORDER, IS UNNECESSARY

In response to Commission questions as to the database safeguards that carriers should install to ensure compliance with the rules promulgated in this proceeding, MCI advocated a mix of customer record database access and use restrictions that would not be unreasonably burdensome to implement. Other than placing "flags" on customer records, use restrictions are largely a matter of limitations on the personnel that use customer data, rather than database systems modifications.[36]

Instead of a combination of database access and use

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[36] MCI also advocated, and the Commission adopted, with variations, other types of safeguards -- such as compliance certification requirements -- to complement the database safeguards discussed in this petition. MCI has no quarrel with those other protections.

restrictions, the Commission decided on a combination of use restrictions and "access documentation."[37] The Commission rejected mandatory access restrictions as impractical, unnecessary and inconvenient for customers, who would be forced to have their service calls rerouted during any conversation that touched on marketing. The Commission also based its decision on the expense of establishing and maintaining a mechanical access system, especially for medium and small sized carriers.[38]

The Commission decided that, in order to encourage compliance with use restrictions and ensure verification in the event of a subsequent dispute, it would be preferable to require that carriers maintain an electronic audit mechanism that tracks access to customer accounts and records whenever customer records are opened, by whom and for what purpose. The rationale for this requirement was that "awareness of this `audit trail' will discourage unauthorized, `casual' perusal of customer accounts, as well as afford a means of documentation that would either support or refute claimed deliberate carrier CPNI violations." The Commission also expressed the belief that such access documentation "will not be overly burdensome" because many carriers already track the use of database resources for a variety of purposes. The Commission required that such contact histories be maintained for one year.[39]

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[37] See Order at ¶¶ 198-99.

[38] Id. at ¶¶ 195-97.

[39] Id. at ¶ 199.

Unfortunately, contrary to the Commission's assumption, the complete audit trail it ordered could be even more complex and burdensome in certain circumstances than the access restrictions that the Commission rejected as too expensive and impractical. Such access documentation would require a costly, vast revamping of numerous systems, which would take much more time than the eight months allowed in the Order. Literal compliance with this aspect of the Order would therefore be impossible for MCI. Accordingly, MCI requests that the audit trail requirement be reconsidered and that a more focused and more feasible alternative, described herein, be substituted and that carriers also be allowed, but not required, to use access restrictions as a partial alternative.

The impossibility of literally recording every time that a customer record is accessed can best be understood by a general overview of the MCI systems that access customer records. Over 20 business functions require the use of customer record data, including order processing, billing, traffic processing and reporting, credits and collections, trouble management and provisioning, financial forecasting and reporting, fraud control, call routing and database maintenance. Only a few of the more than 20 functions are related to sales and marketing. Within each of MCI's business segments, dozens of database systems support these business functions. More than one system may support a given business function simply because separate systems were established for different products, marketing efforts or

third-party vendors, etc.

To make the situation more complex, customer data resides in different locations, and not all information on a given customer is necessarily stored in one place. Customer data is distributed and replicated for performance reasons within the hundreds of systems that access such data. Thus, multiple databases, perhaps thousands, would be affected by a complete customer data audit trail requirement.

To audit all of the databases containing customer data would impact the majority of MCI's major systems. This would be a large, complex software development project, also requiring major hardware upgrades. Many of the dozens of systems that support the various business segments handle millions of transactions every day and access customer databases millions of times each day.

In order to comply with the audit trail requirement, each time customer data is accessed, such access would have to be detected, and a database entry to record the access would have to be generated and stored. Thus, to record each access for those systems that involve millions of contacts with customer records each day would require millions of records each day. If this is multiplied by all of MCI's systems, billions of records would need to be recorded every day to maintain a complete audit trail. Given the current cost of mainframe data storage and associated overhead, as much as $4 million of additional storage would be required to maintain one day's worth of auditing information,

or over $1 billion per year.

Moreover this estimate does not include the cost of upgrading all of MCI's systems or the cost of upgrading the underlying computing power to handle this additional processing. Without such an upgrade, the massive amounts of additional processing required to produce such an audit trail would inevitably slow data retrieval times. Such a slowdown would increase average call handling time significantly, to the point where operations would slow to a crawl, backing up orders and other real-time processing. Additional computing power could be purchased and installed, but only at a tremendous cost. It would be very difficult to estimate the cost of the additional computing power that would be necessary to ensure no degradation in service, but it would probably be of the same order of magnitude as the additional data storage costs. Such a project would take years to implement, diverting resources from other more vital projects, such as Year 2000 compliance. In any event, MCI could not possibly afford such a vast expenditure, no matter how much time it was given.

Other aspects of the audit trail requirement also pose significant problems. For example, it may be extremely difficult to know in a given instance the purpose or purposes of a particular contact with a customer record. Where customer data is accessed for multiple systems, each system might involve a different business function. It will also add a significant cost to enable all systems to indicate the actual individual, as

opposed to a group or department, accessing a customer record. Such a capability would take much more than a year to implement.

In light of the virtual impossibility of fully complying with the audit trail requirement over any conceivable time frame, let alone the eight months allowed in the Order, MCI requests that the Commission reconsider the literal terms of that requirement and allow carriers to establish a more limited access documentation system that would achieve the purposes set forth in the Order. As explained herein, MCI's proposal would establish alternative methods that carriers could use to meet the Commission's goal of "encourag[ing] carrier compliance with [the] CPNI restrictions" by "discourag[ing] unauthorized `casual' perusal of customer accounts."[40] Although these alternatives would be substantially less burdensome and more feasible than the Commission's audit trail requirement, they would be far more focused on the activities that give rise to unauthorized use or disclosure of CPNI and thus would accomplish the Commission's goals more efficiently than the audit trail requirement set forth in the Order.

The first alternative MCI proposes is a narrower audit trail requirement, limited only to instances in which customer data is accessed for sales and marketing purposes. As explained above, most of the systems that access customer data, and, thus, most of the transactions involving such access, relate to business functions far removed from sales and marketing. For example,

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[40] Order at ¶ 199.

customer data is accessed constantly for billing purposes. Each billing record is accessed many times to support billing auditing and to ensure the integrity of MCI's invoices. As also explained above, customer data resides in different locations within MCI. The customer data that is accessed and processed for billing purposes is not available to marketing personnel.

Similarly, customer data is accessed frequently for fraud control purposes. Individual call detail is analyzed and cross-checked from a variety of perspectives in order to identify potential fraud situations (such as a billing number suddenly being used for a large volume of international calls). Again, the customer call detail records accessed for fraud control purposes are not available to sales and marketing personnel.

Given that most of the accessing and processing of MCI's customer data is for business functions unrelated to sales and marketing, and that most of the customer data sources accessed by such functions are not available to sales and marketing personnel, MCI believes that unauthorized use or disclosure of CPNI could be prevented just as effectively by an audit trail requirement limited to the accessing of customer-specific data for sales and marketing and customer service efforts. Sales and marketing and customer service functions are the only operations that, as a practical matter, pose any significant risk of CPNI violations. The entire thrust of the Order was to control the use or disclosure of CPNI for marketing outside a carrier's total service offering to a customer. Other privacy concerns, such as

the possible sale of customer lists to unaffiliated entities, are controlled by other laws or MCI internal regulations, unrelated to the CPNI rules. Thus, to control CPNI violations, audit requirements should focus on sales and marketing and customer service, especially since the customer data that is accessed for other purposes is not available to sales and marketing and customer service efforts.

Moreover, those functions constitute a sufficiently limited universe of MCI's total computer processing systems that, based on current assessments, an audit trail function limited to such purposes could probably be implemented in eight months. It would be feasible for MCI to identify all customer records and data that is used in any way for sales and marketing and customer service functions, as well as all of the systems that access such data for those functions. The accessing of such customer-specific data by such systems appears to be sufficiently finite to permit the auditing of all such transactions.

MCI believes that, based on preliminary cost estimates, it would be able to construct an audit trail mechanism limited to such transactions that would essentially meet the Commission's criteria for such a requirement. The audit record would include the date and time of all such accessing of customer-specific data, the user or group that accessed the data and the purpose thereof. For some groups, the individual accessing the data could be identified, but for others, that would not be possible, at least not across-the-board within eight months. In those

situations, the program used or other identifier of the organization accessing the data would be recorded. Such an audit record could be maintained for a one-year period. Thus, all of the Commission's criteria for the audit trail requirement would be met.[41] Moreover, the narrower focus of such an audit trail would not sacrifice any auditing that serves the purpose of auditing -- namely, discouraging improper CPNI use for marketing.[42]

As another alternative, MCI also suggests that carriers always have the option of using access restrictions for certain individuals or groups in place of an audit trail requirement, if they so choose. Under such an approach, if, for example, a carrier chose access restrictions for its telemarketing staff, they would be mechanically prevented from accessing any customer data at all. There would be nothing to audit or record for those personnel. Although access restrictions are costly to install and impose inefficiencies, and thus should never be imposed by the Commission, the audit trail requirement is so much more onerous that access restrictions may be the lesser of two evils in certain circumstances. In fact, MCI will be using access restrictions for some of its marketing staff as a short-run

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[41] See Order at ¶ 199.

[42] The audit trail concept is so novel, however, that MCI might not have foreseen all of the potential problems at this point and thus may have underestimated the difficulty or cost of implementing its proposed narrowed audit trail requirement. It may become necessary for MCI to revise its projections as to what can be accomplished in eight months, or at all, as it delves more deeply into this project.

stopgap while it tries to implement an audit trail system.

The fact that MCI has chosen access restrictions, at least in the short run, for some of its personnel is a testament to the enormous burden posed by any audit trail requirement, no matter how narrow it might be. Given that the Commission viewed mandatory access restrictions as overly burdensome, in spite of their obvious effectiveness, it should be possible for carriers to choose access restrictions voluntarily as a partial alternative to an audit trail requirement that the Commission viewed as less burdensome. Carriers therefore ought to be allowed to use access restrictions as an alternative, at their option.

IV. MCI REQUESTS CLARIFICATION OF VARIOUS ISSUES TO FACILITATE CARRIER COMPLIANCE WITH SECTION 222

A. Service Definition Issues

MCI requests clarification of the Order's treatment of two service definition issues -- namely, the precise contours of the Commission's "total service approach" and the status of intraLATA toll service.

1. The Total Service Approach

MCI requests that the Commission explicitly confirm what appears to be the gist of its total service approach: namely, that, for purposes of applying Section 222(c)(1), all telecommunications services fall within three groupings -- local, interLATA and CMRS -- and that provision of any service within