

marketing or sales purposes.

I. CARRIERS SHOULD BE ABLE TO USE CPNI TO MARKET CPE AND INFORMATION SERVICES, SUCH AS VOICE MAIL, THAT ARE REASONABLY RELATED TO THEIR TELECOMMUNICATIONS SERVICE OFFERINGS.

The Commission concluded that CPNI may not be used, without customer consent, for the provision or marketing of either CPE or information services under §222(c)(1)(A) since neither constitutes a “telecommunications service.”² The Commission should reconsider its decision in that regard since permitting the use of CPNI for the purpose of marketing CPE and enhanced services, such as voice mail, is totally consistent with the Commission’s “total service” approach to §222(c)(1)(A).

In its Notice of Proposed Rulemaking in this proceeding,³ the Commission tentatively concluded that the term “telecommunications service” as used in §222(c)(1)(A) should be broken into three separate and distinct categories: local, long distance, and wireless.⁴ CPNI derived from one category could not be used to market services in another category without customer consent.

In the Order, however, the Commission saw that a more expansive reading of the statute would be consistent with Congress’ intent and customers’ expectations and would provide carriers with greater flexibility to meet the needs of their customers. Specifically, the “total service” approach adopted by the Commission would allow carriers, without customer consent, to use CPNI from one category of service to market telecommunications services in another

² Order at ¶46. In addition, the Commission concluded that the use of CPNI for those purposes could similarly not be reconciled with the language of 222(c)(1)(B). (*Id.* at ¶¶ 71, 72.)

³ *In the Matter of Implementation of the Telecommunications Act of 1996; Telecommunications Carriers’ Use of Customer Proprietary Information and Other Customer Information*, CC Docket No. 96-115, Notice of Proposed Rulemaking, FCC 96-221 (released May 17, 1996) 11 FCC Rcd. 12513 (“Notice”).

⁴ *Id.* at ¶22.

category of services in which the customer and the carrier also have an existing relationship. The Commission used the concept of "implied customer approval" to expand its former view:

We believe that the language of §222(c)(1)(A) and (B) reflects Congress' judgment that customer approval for carriers to use, disclose, and permit access to CPNI can be *inferred* in the context of an existing customer-carrier relationship. This is so because the customer is aware that its carrier has access to CPNI, and, through subscription to the carrier's service, has implicitly approved the carrier's use of CPNI within that existing relationship.⁵

However, customers' expectations of the services that will be provided by a carrier are not necessarily limited to statutorily defined "telecommunications services." In other words, customers expect that the in customer-carrier relationship will go beyond the mere provision and consumption of "telecommunications services." In particular, customers expect that carriers will make available to them CPE and certain information services, such as voice mail, that are naturally related to the telecommunications services that form the basis for that customer-carrier relationship.

Ameritech recently conducted focus groups with certain of its wireline and cellular telephone customers asking them whether "it is okay for their [local or cellular] telephone company to offer" certain products and services. The results are displayed below.

TABLE I - Wireline Subscribers

Is it okay for your local telephone company to offer the following products/services? Yes responses:

Caller ID	98.0%
Caller ID Display units	97.5%
Call Waiting	96.5%
Telephones for use in your home	91.5%
3-Way calling	91.0%
Voice mail	88.6%

TABLE II - Cellular Subscribers

Is it okay for your cellular telephone company to offer the following products/services? Yes

⁵ Order at ¶23.

responses:

Cellular telephone	98.9%
Cellular services	97.7%
Voice mail	93.1%

As can be seen, customers' view of what is appropriate for their carrier to offer them extends beyond narrowly defined "telecommunications services" to products and services that have a reasonable and logical (in customers' minds) relationship to underlying carrier services. In fact, in the study more customers approve of their local exchange carrier offering them caller ID display units than approve of offering them call waiting. Similarly, more customers approve of their local exchange carrier offering them telephone sets than approve of offering them 3-way calling. And almost 90% would approve of their local exchange carrier offering voice mail service. The figures are even higher for cellular customers.

To customers, it is simply logical that the local exchange carrier that provides them with dial tone can also provide them with the telephone to use it. Similarly, it makes sense to customers that they could be able to get both caller ID and a caller ID display unit from the same source. Likewise, it makes sense that the same company that provides local telephone service can also provide a service such as voice mail that will take a message when the customer's line is busy or when nobody is home. Thus, from the customers' perspective, the customer-carrier relationship embraces products and services naturally related to the backbone telecommunications services that form the primary link between the customer and the carrier.

The Commission used the concept of implied consent in defining a customer's "total service" relationship with his or her carrier.⁶ This concept of "implied consent" and "total

⁶ In doing so, however, the Commission did not expand the term "telecommunications service" -- as contemplated by §222(c)(1)(A) -- into a customer's "total service" package. If "telecommunications service" equaled "total service", then no implied consent would be necessary since use of CPNI within a customer's "total service" would not require any customer approval at all according to the statute. Rather, the Commission used the concept of implied consent to permit the use of CPNI outside the narrow category of telecommunications service from which

service” is well-considered and preserves the intent of Congress and customers’ privacy expectations. In other words, there are circumstances in which customers will naturally expect that their carrier would use information about their use of one category of service to provide them with information about services outside that category.

However, in the “total service” approach, the Commission has permitted that out-of-category use only in connection with other categories of telecommunications services. That limitation, however, is not totally consistent with logical customer expectations. For example, while a customer might naturally expect that a carrier from whom she purchases both local exchange service and paging service might use local exchange CPNI to market cellular service, it seems just as likely that she would expect her local exchange carrier to use its knowledge of her two-line service with caller ID to make her aware of the availability of a two-line telephone set with a caller ID display unit. Similarly, while a customer might naturally expect that the carrier from whom he obtains both cellular service and landline long distance service might use that information to recommend paging service, it is just as likely that he would expect the carrier to use its knowledge of the amount of time that line is busy to recommend voice mail service to take messages when his line is in use.

Simply put, while the concept of implied consent is necessary to permit the use of CPNI to market services outside the category from which the CPNI is derived, there is no reason to limit it to just telecommunications services. Rather, CPNI should be permitted to be used to market CPE and information services, such as voice mail service, that are naturally related to the telecommunications service for which there is an existing customer-carrier relationship.

In the alternative, the Commission should forbear from applying the restrictions of §222(c)(1)(A) to such situations. In this case, the criteria of §10 of the Communications Act of

it is generated.

1934, as amended are clearly met.

First, enforcement of §222(c)(1)(A) in that regard would not be necessary to ensure the charges, practices, classifications, or regulations of the carrier with respect to telecommunications services are just and reasonable and are not unjustly or unreasonably discriminatory. Carriers can use CPNI in this way today and have been able to use it for a number of years without adverse consequences.

Second, clearly such restrictions are not necessary to protect consumers -- especially insofar as the use in question would be consistent with customers' expectations and their "implied consent."

Finally, because of the foregoing, forbearance would be in the public interest. To the extent that the statute would prohibit the use of CPNI without specific prior customer approval to make customers aware of related CPE and enhanced service offerings, forbearance is clearly justified since it would permit carriers to notify customers of products and services that are within customers' current expectations with respect to their customer-carrier relationships.

II. CPNI SHOULD BE ABLE TO BE USED TO MARKET PACKAGES OR BUNDLES THAT INCLUDE OUT-OF-CATEGORY ELEMENTS.

Although the language in the Order is somewhat ambiguous, the Common Carrier Bureau in its recent order in this docket,⁷ made it clear that including any element in a bundle or a package that is not within the customers "total service" arrangement, as defined by the Commission, "taints" the entire package or bundle such that CPNI may not be used without the customers prior consent:

[T]he carrier would be subsequently prohibited from using CPNI, without first obtaining customer approval, to market a bundled offering of CPE or information services with

⁷ *In the Matter of Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Information and Other Customer Information*, CC Docket No. 96-115, Order, DA 98-971 (released May 21, 1998) ("May 21 Order").

telecommunications services to such a customer.⁸

Such restrictions, however, make no sense in light of customers' expectations and the "implied consent" that lies at the heart of the "total service" approach to CPNI. For example, while it is clear that a local exchange carrier can use CPNI to target likely candidates for "caller ID with name" service, they could not inform customers in the same communication, without prior affirmative approval from the customer, that the carrier also offers a display unit capable of displaying the name in addition to the number of the calling party.⁹ Similarly, it is clearly permissible for a local exchange carrier to use local CPNI -- e.g., daily usage patterns -- to identify apparent work-at-home subscribers who could benefit from having a second line. However, it makes no sense (and it would be a disservice to the customer) to prohibit the carrier from using the same CPNI to notify those same customers of the availability of a work-at-home package that includes a second line, a two-line telephone, voice mail, and paging service.

The Commission should, therefore, conclude that, within the bounds of the implied consent inherent in "total service" approach, carriers may use CPNI, without affirmative consent, to market bundles or packages that include, in addition to services within the category from which the CPNI was derived, products and services that are outside that category as well but that otherwise related to the in-category service that is being marketed.

In the alternative, and for the same reasons articulated in Section I, *supra*, the Commission should forbear from the application from any prohibition of §222(c)(1)(A) in that regard since, in the case of bundles or packages with out-of-category elements, enforcement of the provision is not necessary to ensure that there is no unjust or unreasonable discrimination, or for the

⁸ *Id.* at ¶6.

⁹ It is interesting to note that substantial portion of existing caller ID display units are incapable of displaying the calling party name as well. Sale of caller ID with name service without informing the customer of his/her options with respect to display units for caller ID with name service could result in customers who are frustrated with the service.

protection of consumers, and since forbearance is in the public interest.

III. A MASSIVE ELECTRONIC AUDIT MECHANISM IS UNNECESSARY.

The Commission found that, although access restrictions were burdensome and unnecessary,¹⁰ carriers should nonetheless "maintain an electronic audit mechanism that tracks access to customer accounts."¹¹ The Commission was apparently of the view that such a tracking mechanism would be easy to implement:

Such access documentation will not be overly burdensome because many carriers maintain such capabilities to track employee use of company resources for a variety of business purposes unrelated to CPNI compliance, such as to document the volume of computer and database use, as well as for personnel disciplinary matters.¹²

This supposed minimal cost would be justified by certain "benefits:"

We believe awareness of this "audit trail" would 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.¹³

However, the costs of such a requirement are not minimal and any benefits are less than clear.

The Commission's assumption that carriers already maintain such electronic capabilities does not apply to Ameritech. CPNI, in one form or another is contained in approximately 400 of Ameritech's approximately 700 information systems. In most of these systems, of course, the information exists in a form that is neither useful for nor used by marketing or sales personnel -- e.g., billing pre-processing systems, repair databases, outside plant records, etc. Yet, read literally, the Commission's electronic audit rule would require Ameritech to expend approximately 20 person-years of programming work to modify those systems. Moreover, it would create an annual storage requirement in excess of 100 trillion bytes of information -- that is because these

¹⁰ Order at ¶¶195-197.

¹¹ *Id.* at ¶199.

¹² *Id.*

systems are being accessed literally millions of times per day for purposes which, of course, have nothing to do with marketing or sales. To put this in context, Ameritech's annual data disk storage requirements for all other purposes -- billing, personnel, etc. -- is only about half that, approximately 43 trillion bytes of information.

The cost, therefore, of the Commission's electronic audit requirement read literally, is extremely high -- too high in light of the somewhat speculative benefits that would result. For example, although it is undoubtedly true that such an electronic audit mechanism would discourage "casual" perusal of customer accounts, there is no evidence that such perusal is likely or could otherwise be discouraged by appropriate training. In addition, although such an electronic audit mechanism might be useful if there were ever a complaint of CPNI violations, there is similarly no evidence that traditional audit/discovery procedures would be inadequate. The Commission should, therefore, reconsider its requirement for carriers to implement an electronic audit mechanism.

In the alternative, however, the Commission should, at a minimum, clarify that its electronic audit requirement is limited in nature, that it applies only when final customer account record systems are accessed for marketing, sales, or account inquiry purposes, and specifically that it does not apply to :

- systems used for pre-processing information
- systems with no marketing or sales access
- systems that have mechanical blocking implemented
- tracking of accessing customer accounts for which consent has been documented

The Commission's electronic audit requirement should not apply to systems used for pre-processing information. Typically, CPNI is not aggregated in these systems at an account level

¹³ *Id.*

and would generally not be useful for any marketing or sales purposes. For example, there are systems in which usage information is processed which would eventually find its way to be included on customers bills. Ameritech estimates that there are over 100 million usage transactions each day and that these transactions maybe "accessed" by up to 30 different intermediate systems before the processing is complete and they are aggregated on a customer's account. If Ameritech were required to "track" each pre-processing step, this would generate over a trillion records alone.

In addition, the Commission's electronic audit requirement should not apply to systems with no marketing or sales access. Many of Ameritech's information systems are used solely by non-marketing personnel for non-marketing purposes. These systems are typically used to provide support to those groups designing, installing or maintaining Ameritech's infrastructure. They include repair databases, plant assignment databases, etc.

Moreover, the electronic audit requirement should not apply to those systems for which carriers may chose to implement mechanical blocking in lieu of electronic audit. Although Ameritech has indicated the shortcomings of mechanical blocking, such blocking should still be an option for carriers to implement on a per-system basis to meet any concerns the Commission may have for inappropriate use. While mechanical blocking would be very expensive to implement for systems utilized by customer contact personnel, it may be a reasonable solution for those systems for which there are a more limited number of personnel accessing customers' CPNI account data. Utilizing mechanical blocking, coupled with a sign-out feature by which marketing or sales personnel would have to indicate their intended use of any information involving CPNI, should satisfy the Commission's concerns.

Finally, the tracking of access to customer accounts should not apply to those accounts for which customer consent is documented. Obviously, in those situations in which customers have

consented to CPNI use, tracking access to those accounts for CPNI purposes would be meaningless surplusage. The amount of data storage capacity eliminated by excluding these accounts could ultimately be significant.

In light of the foregoing, the Commission should eliminate its electronic audit requirement or, at a minimum, clarify that it is intended to apply when final customer account record systems are accessed for marketing, sales, or account inquiry purposes.

Respectfully submitted,



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