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

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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
)

**REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION
OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION**

The National Telephone Cooperative Association ("NTCA") is a national association of approximately 500 local exchange carriers that provide service primarily in rural areas. All NTCA members are small carriers that are "rural telephone companies" as defined in the Telecommunications Act of 1996. NTCA's petition for reconsideration in this docket asks that the Commission grant rural telephone companies a blanket waiver of the auditing and tracking rules, or, in the alternative, that the Commission forbear from applying the rules to the rural telephone companies.

With one exception, the parties commenting on the various petitions for reconsideration believe that neither the flagging nor the auditing and tracking rules should be imposed on carriers. Almost every party complains that the costs of compliance with these rules are way out of proportion to their alleged benefits. Per carrier estimates for the nonrecurring costs of

implementing the rules range from \$630,000¹ to \$1 billion.² The record shows that small carriers, in particular, will be hard hit with heavy per customer costs for new or upgraded software systems and that these additional costs will have to be recovered from consumers.³ Furthermore, the Commission's solution to this hardship, individual waivers, does nothing to remedy the burden of small companies. Individual waivers are expensive and unduly burdensome. The additional costs that these waivers impose can be avoided by the grant of a blanket waiver that applies to all similarly situated rural telephone companies.⁴ Comments give the Commission a strong record from which it can conclude that the costs of imposing its detailed flagging and auditing requirements are so unduly burdensome and unnecessary that the rules are contrary to the public interest.

Despite this record, MCI, while agreeing that the auditing and tracking requirements are inappropriate for rural telcos and others, contends that the flagging requirement should be retained even for rural telcos. It argues that the Commission should require that carriers show that the flagging requirement would impose a disproportionate burden on operations, relative to all other safeguards. It states that the issues such as the impact of safeguards on competition and the public interest make it impossible to conclude that safeguards are "not necessary" to ensure

¹ Petition of TDS Telecommunications Corporation at 12.

² Petition of MCI Corp. at 38.

³ Petition of NTCA at 8-10.

⁴ In prior comments, NTCA stated that legal costs are likely to be much higher for small telcos that have no existing relationship with FCC counsel. If they are each required to obtain a waiver, it is estimated that NTCA's 500 member rural telcos will spend more than a million dollars just in lawyers' fees. NTCA petition at 11.

reasonable charges or the protection of consumers as required by Section 10 (a).⁵ MCI's assertion is not supported by the plain words in Section 10 or the Commission's interpretation and application of the statute. This is borne out by the decision In Bell Operating Companies Petitions for Forbearance from the Application of Section 272 of the Communications Act, 13 FCC Rcd 2627, 2639-52 (1998). There, the Commission noted that Section 10(b) elaborates on the "public interest" analysis the Commission is required to perform under Section 10(a). It concluded that the plain meaning of Section 10(b) is "that a determination that forbearance would promote competition is a possible, though not a necessary, basis for a finding that forbearance would be consistent with the public interest [Emphasis added]. Further, In Federal Communications Bar Association Petition for Forbearance Under Section 310(d) of the Communications Act, 13 FCC Rcd 6293 (1998), (Federal Communications Bar Association), the Commission specifically found that the public interest prong of Section 10(a) was satisfied by the elimination of significant expenses for licensees, including small businesses entities. Here, as in the case of Federal Communications Bar Association, forbearance will eliminate significant expenses and permit the companies to concentrate on providing quality services.

The Commission should ignore MCI's opposition to the consideration of alternatives to the "first screen" flagging rule. MCI gives no reason for its opposition to consideration of alternatives despite the fact that the Regulatory Flexibility Act requires that the Commission consider less burdensome alternative for small entities.⁶ The objective behind flagging is to alert

⁵ Telecommunications Act of 1996, Pub. L. No. 104104, 110 Stat. 56 (1996 Act) Section 10.

⁶ NTCA at 10, 47 U.S.C. Section 10.

company marketing staff that a customer has requested privacy of its CPNI. This can be done in many ways. There is no need for the Commission to micro manage company practices to the degree it does here. Surely, companies can on their own come up with multiple effective and efficient ways of observing the requirements of Section 222. NTCA believes the Commission should forbear from applying the flagging requirement to rural telcos all together. If it does not forbear, it should alternatively permit the small telcos to develop other ways of achieving the objectives of the rules. Permitting alternatives approaches is appropriate in light of the close subscriber telco relationship in smaller companies and is a better solution for small companies that are still using manual systems or that do not have existing software systems that can be altered. A “one size fits all” approach is not needed to protect consumer privacy. The Commission has effective enforcement mechanisms to ensure that companies comply with alternative approaches. Further Congressional privacy goals may be achieved by rural telcos through company imposed personnel training, supervisory review and company certification. The local exchange carrier industry has a history of vigilance in protecting subscriber privacy. That record supports forbearance from the application of rules that govern minutiae, impose undue burdens and defeat overall public interest goals.

Conclusion

The Commission should grant NTCA's petition for reconsideration. It should forbear from applying the auditing and tracking rules to rural telephone companies, or, in the alternative grant a blanket waiver that applies to all rural telephone companies.

Respectfully submitted,

NATIONAL TELEPHONE COOPERATIVE
ASSOCIATION

By: *L. Marie Guillory*
L. Marie Guillory

By: *Jill Canfield*
Jill Canfield

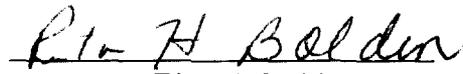
Its Attorneys

2626 Pennsylvania Avenue, N.W.
Washington, D.C. 20037
(202) 298-2300

July 6, 1998

CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Reply to Oppositions to Petitions for Reconsideration of the National Telephone Cooperative Association in CC Docket No. 96-115, CC Docket No. 96-149 was served on this 6th day of July 1998, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:


Rita H. Bolden

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

Robert W. McCausland
Vice-President, Regulatory and
Interconnection
Allegiance Telecom, Inc.
1950 Stemmons Fwy., Suite 3026
Dallas, TX 75207-3118

Robert L. Hoggarth, Esq.
Personal Communications Industry Ass'n.
500 Montgomery Street, Suite 700
Alexandria, VA 22314-1561

Gail L. Polivy, Esq.
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

Michael J. Shortley, III, Esq.
Frontier Corporation
180 South Clinton Avenue
Rochester, NY 14646

Genevieve Morelli
Competitive Telecommunications Ass'n.
1900 M Street, N.W.
Suite 800
Washington, D.C. 20036-3508

Charles C. Hunter, Esq.
Catherine M. Hannan, Esq.
Hunter Communications Law Group, P.C.
1620 I Street, N.W., Suite 701
Washington, D.C. 20006

Stephen J. Davis, Director Office of
Policy Development
Texas Public Utility Commission
1701 North Congress Avenue
P.O. Box 13326
Austin, TX 78701

Richard J. Metzger, Vice-President
and General Counsel
Association for Local
Telecommunications Service
888 17th Street, N.W. Suite 900
Washington, D.C. 20006

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

Michael S. Pabian, Esq.
Ameritech Operating Companies
2000 West Ameritech Center Drive
Room 4H82
Hoffman Estates, IL 60196-1025

Mark C. Rosenblum, Esq.
Judy Sello, Esq.
AT&T
295 North Maple Avenue
Room 324511
Basking Ridge, NJ 07920

John T. Scott, III, Esq.
Crowell & Moring
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2505

Brad E. Mutschelknaus, Esq.
Marieann Z. Machida, Esq.
Kelley Drye & Warren
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036-2423

Rachel J. Rothstein, Esq.
Paul W. Kenefick, Esq.
Cable & Wireless, Inc.
8219 Leesburg Pike
Vienna, VA 22182

Robert M Lynch, Esq.
Durward D. Dupre, Esq.
Darryl W. Howard, Esq.
Robert J. Gryzmala, Esq.
SBC Communications Inc.
One Bell Center, Room 3520
St. Louis, Missouri 63101

Catherine R. Sloan, Esq.
Richard L. Fruchterman, Esq.
Richard S. Whitt, Esq.
Worldcom, Inc.
1120 Connecticut Ave., N.W.
Suite 400
Washington, D.C. 20036

Glenn S. Rabin, Esq.
Alltel Corporate Services, Inc.
655 15th Street, N.W.
Suite 220
Washington, D.C. 20005

S. Mark Tuller, Vice-President-
Legal and External Affairs and
General Counsel
Bell Atlantic Mobile Systems, Inc.
180 Washington Valley Road
Bedminster, NJ 07921

Margot Smiley Humphrey, Esq.
Koteen & Naftalin
1150 Connecticut Ave., N.W.
Suite 1000
Washington, D.C. 20036

Judith St. Ledger-Roty, Esq.
Paul G. Madison, Esq.
Kelley Drye & Warren
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036-2423

Douglas W. Kinkoph
J. Scott Nicholls
LCI International Telecom Corp.
8180 Greensboro Drive
Suite 800
McLean, VA 22102

Pamela J. Riley, Esq.
David A. Gross, Esq.
AirTouch Communications, Inc.
1818 N Street, N.W.
Washington, D.C. 20036

Lawrence W. Katz, Esq.
Edward D. Young, III
S. Mark Tuller
Of Counsel
Bell Atlantic Tel. Companies
1320 North Court House Rd., 8th flr.
Washington, D.C. 22201

John F. Raposa, Esq.
GTE Service Corp.
600 Hidden Ridge,
P.O. Box 152092
Irving, Texas 75015-2092

James C. Falvey
Vice President- Regulatory Affairs
E.Spire Communications, Inc.
131 National Business Parkway
Suite 100
Annapolis Junction, MD 20701

Mark J. O'Connor, Esq.
James J. Halpert, Esq.
Piper & Marbury, L.L.P.
1200 19th Street, N.W.
Washington, D.C. 20036

M. Robert Sutherland, Esq.
A. Kirven Gilbert III, Esq.
Bellsouth Corporation
1155 Peachtree Street, N.E.
Suite 1700
Atlanta, Georgia 30309-3610

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

Raymond G. Bender, Jr., Esq.
J. G. Harrington, Esq.
Dow, Lohnes & Albertson
1200 New Hampshire Ave., N.W.
Suite 800
Washington, D.C. 20036

Kathryn Marie Krause, Esq.
Dan L. Poole, Esq.
US West, Inc.
1020 19th Street, N.W., Suite 700
Washington, D.C. 20036

Jeffrey E. Smith
Senior Vice President and General Counsel
Comcast Cellular Communications, Inc.
480 E. Swedesford Road
Wayne, PA 19087

Robert J. Aamoth, Esq.
Steven A. Augustino, Esq.
Kelley Drye & Warren, LLP
1200 19th St., N.W., Suite 500
Washington, D.C. 20036-2423

Jonathan E. Canis, Esq.
Melissa M. Smith, Esq.
Kelley Drye & Warren LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036

Michael F. Altschul, Esq.
Randall S. Coleman, VP
Cellular Telecommunications
Industry Association
1250 Connecticut Ave., N.W.
Suite 200
Washington, D.C. 20036

Lawrence W. Katz, Esq.
Edward E. Young, Esq.
Michael E. Glover, Esq.
Bell Atlantic Tel. Companies
1320 North Court House Road
Eighth Floor
Arlington, VA 22201

Leonard J. Kennedy, Esq.
Laura H. Phillips, Esq.
Christina H. Burrow, Esq.
Dow Lohnes & Albertson, PLLC
1200 New Hampshire Ave., N.W.
Suite 800
Washington, D.C. 20036

Frederick M. Joyce, Esq.
Christine McLaughlin, Esq.
Joyce & Jacobs, Attys. at Law, L.L.P.,
1019 19th Street, N.W.
14th Floor, PH-2
Washington, D.C. 20036

Benjamin H. Dickens, Jr., Esq.
Gerard J. Duffy, Esq.
Susan J. Bahr, Esq.
Blooston, Mordkofsky, Jackson
& Dickens
2120 L Street, N.W., Suite 300
Washington, D.C. 20037

Sylvia Lesse, Esq.
Philip Macres, Esq.
Kraskin, Lesse & Cosson, LLP
2120 L Street, N.W., Suite 520
Washington, D.C. 20037

Charles H. Kennedy, Esq.
James A. Casey, Esq.
Morrison & Foerster
2000 Pennsylvania Ave., N.W.
Suite 5500
Washington, D.C. 20006

Leon M. Kestenbaum, Esq.
Jay C. Keithley, Esq.
Michael B. Fingerhut, Esq.
Sprint Corporation
1850 M Street N.W., Suite 1100
Washington, D.C. 20036

Mary L. Brown, Esq.
Frank W. Krogh, Esq.
MCI Telecommunications Corporation
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006