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Before the
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	CC Docket No. 96-115

GTE Service Corporation and its affiliated domestic telecommunications,[1] wireless,[2] and long distance[3] companies (collectively "GTE") hereby submit this reply to the oppositions to the petitions for reconsideration of the *Second CPNI R&O*.[4]

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1 GTE Alaska Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., Contel of the South, Inc. and GTE Communications Corporation.

2 GTE Wireless Incorporated and GTE Airfone Incorporated.

3 GTE Communications Corporation, Long Distance division.

4 Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd. 8061 (1998) ("*Second CPNI R&O*").

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List A B C D E

I. THE RECORD SUPPORTS REPEAL OF THE ANTI-WIN BACK RULE

This proceeding presents the Commission with a compelling record supporting the need to reconsider Section 64.2005(b)(3), to the extent it prohibits use of CPNI for win back purposes.[5] To date, almost every carrier that has commented on win back has concluded that the current rule is inimical to vigorous competition and that win back is allowed under Section 222(d).

A handful of carriers nonetheless argue that using CPNI for win back is anticompetitive and contrary to congressional intent. As GTE demonstrates below, these arguments are baseless and self-serving.[6]

Allegiance Telecom, Inc., Commonwealth Telecom Services, Inc., Focal Communications Corp., and KMC Telecom, Inc.[7] describe win back campaigns as "trench warfare."[8] This melodramatic characterization of the competitive marketplace suggests that some companies seek to paralyze a critical, legitimate, and effective competitive tool with a regulatory handicap.

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[5] *See e.g.*, Petitions for Reconsideration of 360 Communications, ALLTEL, AT&T, Bell Atlantic, BellSouth, Frontier, GTE, PageNet, Personal Communications Industry Association, PrimeCo, SBC, USTA and Vanguard. *See also* Oppositions of Air Touch Communications, Ameritech, Arch, AT&T, BellSouth, Celpage, Frontier, and SBC.

[6] An example of the self-serving focus of the opponents of win back is the allegation by ALTS that consumer expectations do not "provide insight into the meaning of all portions of Section 222." ALTS at 4. It is difficult to imagine *any* aspect of a consumer protection rule that cannot be informed by the expectations of consumers.

[7] Identical oppositions were filed by Allegiance Telecom, Inc., Commonwealth Telecom Services, Inc., Focal Communications Corp., and KMC Telecom, Inc. Therefore, we refer to these four pleadings throughout this reply as the "Joint Oppositions" and the parties as the "Joint Opponents."

[8] Joint Opposition at i.

These parties further argue that win back efforts "thwart competition" because "the former carrier could cause its retail marketing unit to use CPNI to propose new pricing packages to its former customers."[9] According to the Joint Opponents, it is "difficult for a competitive carrier to learn of these promotions."[10] The Communications Act, however, does not require that competitive carriers have an easy time determining the pricing of services offered by the incumbent. Rather, the Act requires that "all practices . . . in connection with communications service, shall be just and reasonable."[11] Using win back to provide a more competitive price for services, in order to retain customers, is a reasonable practice because both parties vying for the business have an opportunity to out-bid each other. It is also undeniably pro-consumer. There is no record evidence, beyond mere allegations, that win back efforts are a *per se* violation of Section 201(b).[12] Opponents of win back have not pointed to one instance in which win back has been used in a anticompetitive manner.

The Joint Opponents' argument that Congress intended to prohibit win back is equally unavailing.[13] These parties fail to present any Congressional statements in support of this position. Instead, they rely on general provisions in Section 222 as

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9 Joint Oppositions at 3.

10 *Id.*

11 47 U.S.C. § 201(b).

12 Joint Oppositions at 9-10. To the extent a carrier's specific win back efforts violate Section 201(b), the Commission's complaint process is available to enforce that provision of the Communications Act. However, the Commission should not institute a blanket prohibition against win back because it will deny carriers a valuable marketing tool.

13 Joint Opposition at 5-8.

evidence of Congress's specific intent. These provisions, however, cast no light on congressional intent regarding subsection 222(d) and in no way undermine the interpretation of numerous commenters that win back is permitted.

Finally, ILECs should not be hobbled by more restrictive win back limitations because ILECs may learn of a customer's switch from a PIC change order, as MCI suggests.[14] MCI presents no evidence that ILECs have advantageous access to PIC and CLEC change orders. In GTE's case, GTE uses a mechanical system to notify its long distance and retail operations of PIC and CLEC change orders by the same method and at the same time as it notifies other carriers. GTE has no preferential access to PIC change orders and assures that its conduct is nondiscriminatory.

II. IMPOSING DIFFERENT CPNI REQUIREMENTS ON CERTAIN CLASSES OF TELECOMMUNICATIONS CARRIERS IS INCONSISTENT WITH THE ACT AND THE COMMISSION'S RULES

Several carriers argue that the Commission should effectively rewrite the Communications Act by imposing more stringent CPNI requirements on incumbent carriers than on themselves. For example, e.spire claims that CPNI restrictions should apply only to ILECs.[15] Other carriers argue that the anti-win back rule should apply only to ILECs.[16] MCI contends that only CMRS carriers should be allowed to use CPNI to market CPE/information services.[17] However, neither the plain language of Section

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[14] MCI at 19.

[15] e.spire at 3.

[16] Cable & Wireless at 2-5, e.spire at 4, TRA at 6-8.

[17] MCI at 24-42. The Commission should look to customer perceptions of the role of CPE and information services such as voice mail with respect to both CMRS and

(Continued...)

222, privacy concerns, nor competitive equity would be served if the Commission were to adopt any of these approaches.

The plain language of Section 222 precludes such a discriminatory interpretation. Section 222 applies equally to all telecommunications carriers, except in two limited instances.[18] Furthermore, Congress adopted Section 222 after it considered and rejected previous versions of the consumer privacy regulation, which were applicable only to BOCs or imposed differential treatment based on size.[19] Not surprisingly, the parties that seek additional ILEC CPNI requirements do not point to the clear text of the statute; there is no support therein for the regulatory gamesmenship they advocate. Because disparate treatment of ILECs is inconsistent with Section 222, arguments similar to those presented by e.spire, MCI, Cable & Wireless and TRA have already been resoundingly rejected by the Commission when it determined that treating all telecommunications carriers the same "addresses competitive concerns" in the use and disclosure of CPNI.[20]

(...Continued)
wireline services. While customer perceptions may differ for various products, justifying a different treatment, disparate regulations should not depend solely on the type of service. Service-based discrimination would be contrary to customer expectations, for example in the case of voice mail, which customers may view as being a part of their total service relationship with either a wireline or a CMRS carrier.

[18] Sections 222(c)(3) and (e) provide specific additional requirements on all LECs (not just ILECs) in their handling of aggregate customer information and subscriber list information.

[19] H.R. Conf. Rep. No. 104-458, at 203-04 (1996), *reprinted in* 1996 U.S.C.C.A.N. 124, 217-18.

[20] *Second CPNI R&O* at 8098-8099. Subsection 222(a) stipulates that it is the duty of "*every* telecommunications carrier to protect the confidentiality of proprietary
(Continued...)

Further, a principal purpose of Section 222 is to protect consumer privacy. As the Commission indicated in the *Second Report and Order*, consumers' privacy deserves protection no matter what type of carrier possesses sensitive information.[21] Finally, placing more onerous conditions on ILECs than on others would clearly be anticompetitive. Allowing ILECs, like others, to make reasonable uses of CPNI to market additional services, promotes competition by increasing consumer information and options. Eliminating such use would hobble the ILEC as a market participant and provide other carriers with marketing advantages that would distort competition and harm consumers.[22]

(...Continued)
information . . . ." 47 U.S.C. § 222(a).

[21] *Second CPNI R&O*, ¶ 49.

[22] Despite all these valid reasons for equal treatment, MCI attacks GTE and argues that GTE must be constrained with different, oppressive regulatory requirements concerning non-CMRS related CPE because the company may exploit an "equipment distribution monopoly" for ADSL modems. MCI at 26-28. This allegation is based on the hypothetical situation in which GTE abuses its supposed market power in the ADSL modem business. However, GTE is not in the ADSL modem manufacturing business and has no intention or ability somehow to attain a monopoly in that market. Indeed, GTE expects the modem market to become quite competitive when manufacturers regard ADSL as a certain market . Because GTE is in the ADSL service business, not the modem business, GTE has every incentive to promote competitive production of modems in order to reach a wider customer base with its service. Furthermore, this Docket is not the appropriate place to raise issues related to GTE's ADSL Tariff, which is under investigation in a separate proceeding.

III. CUSTOMER PERCEPTIONS REQUIRE THAT SERVICE PACKAGES FALL WITHIN THE TOTAL SERVICE APPROACH

Customers who buy a package of services from a carrier at a single price have a service relationship that differs from customers who buy one or two types of service on a stand-alone basis. Thus, MCI is incorrect in asserting that "there is little difference between a total service offering that includes two services and an integrated service 'package' that includes these same services."[23] It may be true that technologically the services are similar. But the touchstone of the total service approach is customer perceptions, not technology. In the case of the package, the customer will perceive a package marketed under a single brand name, priced as a package, and possibly not even available from the provider as separate services. There would be no violation of customer privacy expectations if a carrier were to market an enhancement to the package without prior consent.

Treating packages as within the total service concept is also pro-competitive. One of the most effective techniques for a competitive carrier to enter a new service market is to provide a package of services to customers and then expand and enhance that package. Thus a long distance carrier that also offered CMRS could create a branded package of long distance and CMRS services, then enter the local service market by enhancing the package to include a local component. In GTE's view, this strategy may well be the most effective one to bring about increased local competition.

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[23] MCI at 3.

IV. THE COMMISSION'S ELECTRONIC SAFEGUARD REQUIREMENTS ARE BURDENSOME AND UNNECESSARY AND MUST BE REVOKED

There is ample and compelling support in the record for the elimination of the Commission's electronic safeguard rules.[24] Nevertheless, MCI argues that requests to eliminate safeguards other than the "audit trail" requirement should be rejected.[25] MCI distinguishes the audit trail rule from other safeguards because of its "unnecessary burdensomeness."[26] As demonstrated in the record, other provisions, such as the software flags, may be equally burdensome. In addition to the burden presented by the astronomical expense of implementation, the flag and audit requirements would be an administrative nightmare for large carriers, like GTE, because thousands of systems will have to be updated at the same time that systems are undergoing revision to avoid Year 2000 problems. Therefore, the Commission should, at a minimum, rescind the electronic auditing and software flag requirements.

V. The COMMISSION SHOULD NOT GRANDFATHER APPROVALS THAT FAIL TO MEET MINIMAL STANDARDS

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24 See e.g. Petitions for Reconsideration of *See* 360° Communications, ALLTEL, Ameritech, AT&T, Bell Atlantic, BellSouth, Competitive Telecommunications Association, Frontier, GTE, MCI, NTCA, TDS Telecommunications and The Independent Alliance. *See also* Oppositions of Airtouch, Ameritech, Bell Atlantic, BellSouth, Frontier, Intermedia, and SBC.

25 MCI at 48-53.

26 *Id.* at 48.

AT&T's request that the Commission grandfather approvals it obtained before the rules became effective should be denied. AT&T failed to give anything close to reasonable notice of customers' CPNI rights. Furthermore, grandfathering AT&T would have anticompetitive consequences because it would effectively eliminate the Commission's notice and approval requirements for a very large percentage of AT&T's customers, while leaving other carriers with the expense and risk of following the Commission's rules.

VI. THE COMMISSION SHOULD PREEMPT STATE REQUIREMENTS THAT ADD ADDITIONAL RESTRICTIONS AGAINST CARRIER USE OF CPNI

As the Commission stated in the *Second CPNI R&O*[27] "[s]tate rules that likely would be vulnerable to preemption would include ... those state regulations that sought to impose more limitations on carriers' use [of CPNI than section 222]. " The Commission now has before it Comments of the Texas PUC which describe a proposed rule that would add substantial restrictions on carrier use of CPNI. While the Commission quite properly has determined to deal with preemption questions on a case-by-case basis,[28] it need not act on the Texas PUC proposal until adopted. However, the Texas PUC proposes restrictions on the use of CPNI of the type that should be preempted because they directly conflict with Congress's aims in Section 222. Therefore, GTE urges the Commission to reiterate that additional CPNI use

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27 *Second CPNI R&O* at ¶ 18.

28 *Id.*

restrictions will be expeditiously preempted, particularly where other federal statutes, such as 47 U.S.C. 227(c), already address customer privacy concerns.

VII. CONCLUSION

For all of the foregoing reasons, the Commission should reconsider the *Second CPNI R&O* and eliminate those rules that impair competition and reduce customer choice, as described in GTE's Petition and Comments.

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