services in a particular area except as an element of a customer's CSR. In effect, they are transforming otherwise available data into CPNI, thereby keeping it hidden from competitors. Especially in instances where a customer expresses interest in a CLEC's local services during a telemarketing call, the CLEC representative should be permitted to obtain approval by means of the shortened procedure discussed above and, on the basis of that approval, gain access on a real-time basis to the ILEC's CSR electronically while the customer is on the line. Otherwise, it will be impossible to meet customers' expectations as to competitive local services that they in fact wish to buy.

III. NO PARTY DIRECTLY CHALLENGES MCI's APPROACH TO "WINBACK" AND RETENTION MARKETING UNDER SECTION 222(b)

Various parties mischaracterize MCI's oft-stated position on "winback" and retention marketing and express opposition to it, but their rationale generally does not conflict with MCI's approach. For example, SBC and GTE denounce MCI's attempt to construct what they view as a different rule for ILECs and argue that ILECs should be able to use CPNI derived from the provision of "retail" service to the end-user customer for winback or retention marketing. They also concede that a carrier should not be able to use information learned from serving another carrier, which is protected by Section 222(b).[79]

In principle, that is also MCI's position. As MCI has

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[79] SBC Comments at 20-21; GTE Comments/Opp. at 15-16 & n. 48. See also, BellSouth Comments at 9-10; US West Opp. at 19.

explained a number of times, winback or retention marketing should be prohibited only where a carrier uses the proprietary information of another carrier, especially information derived from the provision of a monopoly service, for such marketing. In that situation, the carrier using such unique information is exploiting a monopoly-derived advantage to stifle competition. MCI's position thus is the same as Frontier's, since both would permit the ILECs to use information that is truly CPNI for winback or retention marketing.[80]

Where MCI parts company with the ILECs is in the application of these principles to the realities of the telecommunications industry. It so happens that the ILECs are the only firms that regularly receive such proprietary information through the provision of monopoly network facilities to CLECs for resale and the implementation of PIC changes in their provision of access services to IXCs. They therefore obtain from CLECs and IXCs unique advance notice of customer decisions to switch local and long distance carriers. The use of such customer-specific information for winback or retention marketing violates Section 222(b) and should be prohibited.

SBC tries to avoid this reality by characterizing the facts learned from a CLEC's order to convert a customer to the CLEC's service as information of the customer that the CLEC is authorized to give to the ILEC as the customer's agent. In that way, SBC persuades itself that the CLEC's order switching the

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[80] Frontier Response at 4.

customer, which the CLEC has to submit to the ILEC as the monopoly provider of the underlying network facilities, is not really the proprietary information of the CLEC.[81] That is obviously not the case, and SBC's view of the situation is a perfect illustration of the need for stringent rules in this area. SBC's knowledge of the customer's switch would only be something other than the CLEC's proprietary information if SBC actually learned it from the customer in the usual manner that a retail service provider learns of the loss of a customer, e.g., by a call from the customer to a customer representative. SBC's account of this scenario supports MCI's contention in its Opposition to other parties' petitions for reconsideration that ILECs should be presumed to have learned of customer switches from other carriers, rather than the customer.

GTE and Ameritech also avoid reality by asserting that ILECs do not "possess unique information" that can be used "to disadvantage customers."[82] GTE immediately contradicts itself by admitting that "ILECs have CLEC information with regard to their purchase of unbundled network elements," which is protected by Section 222(b).[83] Ameritech asserts that its retail operations receive notice that they have lost a retail customer in the same manner that a reseller would be notified if another reseller

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[81] See SBC Comments at 21, n. 51.

[82] GTE Comments/Opp. at 15.

[83] GTE Comments/Opp. at 15-16, n. 48.

submitted an order for the same line.[84] That might be true in the rare instance where the retail operation first learns of the switch from the customer, but almost all of the time, the knowledge will come through the change order submitted to the "wholesale" network operations.

Ameritech tries to go a step further by claiming that the proprietary information it receives from CLECs does not really provide "advance" notice of customer switches, since the customer has already decided to switch by that point.[85] Such notice is "advance" notice, however, because it is received long before any other carrier would learn of a switch in the normal course of retail operations. Ameritech also complains that there is no evidence that Congress intended that a winback restriction should apply only to ILECs.[86] In effect, however, Congress did draw such a distinction by making Section 222(b) absolute. Ameritech and the other ILECs may be correct that there should be no winback restriction under Section 222(c), but ILECs are still prohibited from using the carrier proprietary information they obtain for winback marketing or any marketing at all.

Ameritech also objects to MCI's request that non-CPNI customer-specific carrier proprietary information also be covered by the winback prohibition. It tries to draw a distinction between the identity of the carrier to which a former ILEC

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[84] Ameritech Comments at 4.

[85] Id. at 4-5.

[86] Id. at 5.

customer has switched, which it agrees is proprietary, and the mere fact that the customer has switched, which it claims is not proprietary.[87] The problem with that is that the simple fact that the customer has decided to switch is something that the ILEC learns only on account of its monopoly role as network service provider to the chosen CLEC or IXC. Stripping out the identity of the chosen carrier and then giving the name of the customer to a marketing representative for winback marketing hardly comports with Section 222(b), and the Commission should explicitly say so on reconsideration.

IV. THE COMMISSION SHOULD ALSO CLARIFY THE ORDER IN THE MANNER PROPOSED BY MCI

US West opposes two of the clarifications sought by MCI. It states that no rule amendment is needed with respect to the use of CPNI for fraud prevention, as suggested by MCI, given the clarity of Section 222(d)(2).[88] US West is somewhat confused here. The MCI request that US West is apparently referring to has nothing to do with the use of CPNI for fraud prevention, but, rather, fraud as to the nature of the CPNI itself. MCI is concerned that carriers, particularly ILECs, will try to use various techniques to mask the confidential or proprietary nature of CPNI or carrier proprietary information. Contrary to assertions by US West and GTE, which also opposes this

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[87] Id. at 5-6.

[88] US West Opp. at 21.

clarification,[89] this is not mere speculation, since the ILECs' arguments concerning the use of carrier proprietary information for winback marketing reflects an inclination to mischaracterize proprietary information as something not proprietary. Accordingly, MCI requested that the Commission make it clear that techniques such as transmitting CPNI or carrier proprietary information to another entity will not alter its status as CPNI or proprietary information.

US West also opposes MCI's request that the Commission clarify the application of the total service approach where a customer has more than one carrier providing a given category of service. For example, where a customer has two long distance carriers, MCI takes the position that both should be treated as the customer's long distance service provider for purposes of applying the CPNI rules and requests confirmation of that approach. US West does not specifically comment on that request, but does oppose the related request that where a customer is served by one carrier on one line and another carrier on the other, that the Commission clarify that both carriers will be treated as the customer's service provider for both lines for purposes of applying the CPNI rules.

US West argues that no such clarification is needed because any marketing that each carrier does with respect to the line it does not serve would not involve the use of CPNI, so there would

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[89] GTE Comments/Opp. at 15, n. 47.

be no restriction on such marketing in any event.[90] It is not clear what US West is trying to say here. If carrier A is using CPNI derived from providing service on line 1 in order to market service on line 2, it is not apparent why such information loses its character as CPNI just because it is being used to market service as to a different line. US West's response does not settle the issue, and clarification is needed.

GTE opposes MCI's request that the Commission clarify the status of intraLATA toll service as a "floating" category. MCI's position is that intraLATA toll should be treated only as part of a carrier's primary service category, rather than treated as local or long distance service at the carrier's option. Otherwise, ILECs would be able to use their large databases of intraLATA toll CPNI to market long distance service without customer approval, giving them an unearned entree into the long distance market. GTE claims that ILECs should not be prohibited from using intraLATA toll CPNI to market long distance service while IXCs are permitted to use long distance CPNI to market intraLATA toll, especially given the large IXCs' control of the long distance market.[91]

GTE's comparison is a false one. Under MCI's approach, IXCs cannot use intraLATA toll CPNI to market local service without customer approval, just as ILECs cannot use intraLATA toll to market long distance service without customer approval. At the

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[90] US West Opp. at 22.

[91] GTE Comments/Opp. at 14-15.

same time, ILECs are free to use their local service CPNI to market intraLATA toll, and IXCs are free to use their long distance CPNI to market intraLATA toll. In the first comparison, the ILECs may feel that they are more restricted, relatively, than the IXCs, since they have more intraLATA toll CPNI. That, however, is only because of their monopoly headstart in that market, which they ought not to be able to exploit. In the second comparison, the ILECs come out ahead, as a practical matter, since any ILEC's control of the local service market in its territory is so much more complete than any IXC's control of the long distance market. Thus, GTE's complaint is not well-founded, and the Commission should clarify its approach to the intraLATA toll market in its CPNI regime in the manner proposed by MCI.

CONCLUSION

For the reasons stated above and in MCI's Petition, the Order should be reconsidered and modified in the manner proposed.

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Dated: July 8, 1998

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I, Sylvia Chukwuocha, do hereby certify that a true copy of the foregoing Reply of MCI Telecommunications in Support of its Petition for Reconsideration was served this 8th day of July, 1998 by hand delivery or first class mail, postage prepaid, upon each of the following parties:

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