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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Implementation of the Telecommunications Act of 1996	)	CC Docket No. 96-115
Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information;	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended	)	CC Docket No. 96-149

ORDER ON RECONSIDERATION AND PETITIONS FOR FORBEARANCE

Adopted: August 16, 1999 **Released: September 3, 1999**

By the Commission: Commissioner Furchtgott-Roth approving in part, concurring in part and issuing a statement; Commissioner Tristani approving in part, dissenting in part and issuing a statement.

TABLE OF CONTENTS

Paragraph

I. INTRODUCTION 1

II. OVERVIEW 7

III. BACKGROUND 8
- A. The CPNI Order 8
- B. The Clarification Order 9
- C. The Stay Order 10

IV. CONSISTENT TREATMENT FOR ALL CARRIERS 11
- A. Incumbents vs. CLECs 11
- B. Wireline vs. Wireless Treatment 12

C. Small and Rural Carriers 15

V. CARRIER'S RIGHT TO USE CPNI WITHOUT CUSTOMER APPROVAL 16
A. The Total Service Approach 16
1. Background 16
2. Petitions for Reconsideration 18
3. Petitions for Forbearance 22
4. Requests for Clarification 30

B. Use of CPNI to Market Customer Premises Equipment and Information Services 39
1. Background 39
2. Petitions for Reconsideration 40
3. Petitions for Forbearance 48
a. Introduction 48
b. CMRS Providers 49
c. Wireline Carriers 50
d. Forbearance from all CPNI Rules for CMRS Providers 57
C. Use of CPNI to Market to Former and "Soon-to-be-Former" Customers 64
1. Background 64
2. "Winback" 66
a. Background 66
b. Discussion 67
3. Retention of Customers 75
a. Background 75
b. Discussion 77
c. Petitions for Forbearance 80
D. Disclosure of CPNI When a Customer is "Won" 86

VI. APPROVAL UNDER SECTION 222(c)(1) 93
A. Grandfathering Pre-existing Notifications 93
B. Oral and Written Notification 103
C. Preemption of State Notification Requirements 112
D. Details of CPNI Notice 115

VII. SAFEGUARDS UNDER SECTION 222 117
A. Background 117
B. Notice 121
C. Evidence of Cost of Compliance 124
D. The Flagging Requirement 126
E. The Audit Trail Requirement 127
F. The Corporate Officer Certification 128

G. Other Safeguard Provisions 130
H. Petitions for Forbearance 131
I. Small and Rural Carriers 132
J. Adequate Cost Recovery 133
K. Enforcement of CPNI Obligations 134

VIII. SECTION 222 AND OTHER ACT PROVISIONS 135
A. Section 222 and Section 272 135
B. Disclosure of Non-CPNI Information Pursuant to Section 272 146
C. Section 222 and Section 254 149
D. Application of Nondiscrimination Rules Under Sections 201(b) and 202(a)...152

IX. OTHER ISSUES 154
A. Status of Customer Rewards Program 154
B. Non-telecommunications Services Listed on Telephone Bill 157
C. Provision of Calling Card as Provision of Service 160
D. Use of CPNI to Prevent Fraud 162
E. Definition of "Subscribed" in Section 222(f)(1)(A) 165
F. CPNI "Laundering" 166
G. Acts of Agents of Wireless Providers 168
H. Information Known to Employees 172
I. Use of CPNI Under Section 222(d)(3) During Inbound Calls 173

X. PROCEDURAL ISSUES 177

XI. ORDERING CLAUSES 201

APPENDIX A
APPENDIX B

I. INTRODUCTION

1. On February 26, 1998, the Commission released the *CPNI Order*[1] adopting rules implementing the new statutory framework governing carrier use and disclosure of customer proprietary network information (CPNI) created by section 222 of the Communications Act (hereinafter "the Act").[2] CPNI includes, among other things, to whom, where, and when a customer places a call, as well as the types of service offerings to which the customer subscribes and the extent the service is used.[3]

2. This order on reconsideration is issued in response to a number of petitions for reconsideration, forbearance, and/or clarification of the *CPNI Order*.[4] In this order we modify the *CPNI Order*, in part, to preserve the consumer protections mandated by Congress while more narrowly tailoring our rules, where necessary, to enable telecommunications carriers to comply with the law in a more flexible and less costly manner.

3. The Telecommunications Act of 1996 (1996 Act) became law on February 8, 1996.[5] Although most of the provisions in the 1996 Act aim to implement Congress' intent that the 1996 Act "provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition,"[6] section 222 addresses a different goal. CPNI is extremely personal

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[1] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket Nos. 96-115 and 96-149, Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 (1998) (*CPNI Order*). The Commission also released a *Further Notice of Proposed Rulemaking* on February 26, 1998 seeking comment on three general issues that principally involve carrier duties and obligations established under sections 222(a) and (b) of the Act. *CPNI Order*, 13 FCC Rcd at 8200-04, ¶¶ 203-10. We do not address the Further Notice issues in this order on reconsideration.

[2] 47 U.S.C. § 222.

[3] *CPNI Order*, 13 FCC Rcd at 8064, ¶ 2. *See* 47 U.S.C. § 222(f)(1).

[4] A number of parties also filed comments and reply comments. *See* Appendix A.

[5] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act); codified at 47 U.S.C. § § 151 *et seq.* Hereinafter, all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code. The 1996 Act amended the Communications Act of 1934. We will refer to the Communications Act of 1934, as amended, as the "Communications Act" or "the Act."

[6] Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess., 1 (1996) (*Joint Explanatory Statement*).

to customers as well as commercially valuable to carriers.[7] As we stated in the *CPNI Order*:

> Congress recognized . . . that the new competitive market forces and technology ushered in by the 1996 Act had the potential to threaten consumer privacy interests. Congress, therefore, enacted section 222 to prevent consumer privacy protections from being inadvertently swept away along with the prior limits on competition.[8]

4. As the Commission previously noted in the *CPNI Order*, section 222 is largely a consumer protection provision that establishes restrictions on carrier use and disclosure of personal customer information.[9] The aim of section 222 stands in contrast to the other provisions of the 1996 Act that seek primarily to "[open] all telecommunications markets to competition,"[10] and mandate competitive access to facilities and services. Section 222 reflects Congress' view that as competition increases, it brings with it the potential that consumer privacy interests will not be adequately protected by the marketplace. Thus, section 222 requires *all* carriers, whether or not a market is competitive, to protect CPNI and embodies the principle that customers must be able to control their personal information from unauthorized use, disclosure, and access by carriers.[11] Where information is not specific to the customer, or where the customer so directs, section 222 permits the free flow or dissemination of information beyond the existing customer-carrier relationship.[12]

5. In most circumstances, the constraints placed on carriers by section 222 only restrict the use or disclosure of CPNI *without* customer approval.[13] When carriers are prevented from using a customer's CPNI by section 222, and the rules we promulgated in the *CPNI Order*, carriers need only obtain the customer's approval to use that customer's CPNI. Once a carrier has acquired customer approval, carrier use or disclosure of CPNI, in most cases, is unrestricted. Thus, section 222 enables customers to relinquish the presumption of privacy as they see fit.

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[7] *CPNI Order*, 13 FCC Rcd at 8064, ¶ 2.

[8] *CPNI Order*, 13 FCC Rcd at 8064, ¶ 1.

[9] *CPNI Order*, 13 FCC Rcd at 8065, ¶ 3.

[10] *Joint Explanatory Statement* at 1.

[11] *CPNI Order*, 13 FCC Rcd at 8065, ¶ 3.

[12] *CPNI Order*, 13 FCC Rcd at 8065, ¶ 3.

[13] *See, e.g.*, 47 U.S.C. § 222(c)(1) (telecommunications carriers may use, disclose, or permit access to its customer's CPNI with approval of customer); 47 U.S.C. § 222(c)(2) (telecommunications carriers shall disclose CPNI to any person designated by customer upon affirmative written customer request).

6. Congress' determination in section 222 to balance competitive interests with consumers' interests in privacy and control over CPNI governed the Commission's reasoning and conclusions in the *CPNI Order*. This order is no different: we seek to carry out vigilantly Congress' consumer protection and privacy aims, while simultaneously reducing the burden of carrier compliance with section 222 by eliminating unnecessary expense and administrative oversight where customer privacy and control will not be sacrificed.

II. OVERVIEW

7. By this order, we respond to the requests for reconsideration, clarification and forbearance as follows:

(a) We deny the petitions for reconsideration which ask us to amend the CPNI rules to differentiate among telecommunications carriers.[14]

(b) We decline to modify or forbear from the total service approach adopted in the *CPNI Order* because the total service approach keeps control over the use of CPNI with the customer and best protects privacy while furthering fair competition. We also clarify a number of aspects of the total service approach in response to petitioners' requests.[15]

(c) We grant, in part, the petitions for reconsideration which request that we allow all carriers to use CPNI to market customer premises equipment (CPE) and information services under section 222(c)(1) without customer approval. We conclude that all carriers may use CPNI, without customer approval, to market CPE. We further conclude that CMRS carriers may use CPNI, without customer approval, to market all information services, while wireline carriers may do so for certain information services. We deny the petitions for forbearance on these issues.[16]

(d) We eliminate the restrictions on a carrier's ability to use CPNI to regain customers who have switched to another carrier, contained in Section 64.2005(b)(3) of our rules. We find that "winback" campaigns are consistent with Section 222(c)(1). The Order concludes, however, that if a carrier uses information regarding a customer's decision to switch carriers derived from its wholesale operations to retain the customer, such conduct violates the prohibitions in section 222(b) against use of proprietary information gained from

[14] *See* discussion *infra* Part IV.

[15] *See* discussion *infra* Part V.A.

[16] *See* discussion *infra* Part V.B.

another carrier in marketing efforts.[17]

(e) We address various aspects of a customer's approval to use CPNI consistent with section 222. We also grandfather a limited set of pre-existing notifications to use CPNI and adopt the conclusions reached in the Common Carrier Bureau's *Clarification Order*.[18] We also eliminate, in an effort to reduce confusion and regulatory micro-management, section 64.2007(f)(4) of our rules, which requires a carrier's solicitation for approval, if written, to be on the same document as the carrier's notification.[19] Further, we affirm our decision to exercise our preemption authority on a case-by-case basis for state rules that conflict with our own.[20]

(f) We lessen the regulatory burden of various CPNI safeguards while continuing to require that carriers protect customer privacy. We modify our flagging requirement so that carriers must clearly establish the status of a customer's CPNI approval prior to the use of CPNI, but leave the specific details of compliance with the carriers.[21] In so doing, we allow the carriers the flexibility to adapt their record keeping systems in a manner most conducive to their individual size, capital resources, culture and technological capabilities. Similarly, we amend our rules to eliminate the electronic audit trail requirement and instead require carriers to maintain a record of their sales and marketing campaigns that use CPNI.[22]

(g) We affirm our conclusion in the *CPNI Order* that the most reasonable interpretation of the interplay between sections 222 and 272 is that section 272 does not impose any additional obligations on the Bell operating companies (BOCs) when they share their CPNI with their section 272 affiliates.[23] We also adopt the Common Carrier Bureau's conclusion in the *Clarification Order* that a customer's name, address and telephone number are "information" for the purposes of section 272(c)(1), and consequently, if a BOC makes such information available to its 272 affiliate, it must then make it available to non-affiliated entities.[24]

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[17] *See* discussion *infra* Part V.C.

[18] *See* discussion *infra* Part VI.A.

[19] *See* discussion *infra* Part VI.B.

[20] *See* discussion *infra* Part VI.C.

[21] *See* discussion *infra* Part VII.D.

[22] *See* discussion *infra* Part VII.E.

[23] *See* discussion *infra* Part VIII.A.

[24] *See* discussion *infra* Part VIII.B.

(h) We find that the relationship of sections 222 and 254 does not confer any special status to carriers seeking to use CPNI to market enhanced services and CPE in rural exchanges to select customers.[25] Moreover, the Order rejects the contention that the Commission should apply the requirements of sections 201(b), 202(a) and 272 to incumbent local exchange carriers (ILECs) to impose a duty on ILECs to electronically transmit a customer's CPNI to any other entity that obtains a customer's oral approval to do so.[26]

III. BACKGROUND

A. The CPNI Order

8. On May 17, 1996, the Commission initiated a rulemaking, in response to various formal requests for guidance from the telecommunications industry, regarding the obligation of carriers under section 222 and related issues.[27] The Commission subsequently released the *CPNI Order* on February 26, 1998.[28] The *CPNI Order* addressed the scope and meaning of section 222, and promulgated regulations to implement that section. It concluded, among other things, as follows: (a) carriers are permitted to use CPNI, without customer approval, to market offerings that are related to, but limited by, the customers' existing service relationship; (b) before carriers may use CPNI to market outside the customer's existing service relationship, carriers must obtain express written, oral, or electronic customer approval; (c) prior to soliciting customer approval, carriers must provide a one-time notification to customers of their CPNI rights; (d) in light of the comprehensive regulatory scheme established in section 222, the *Computer III* CPNI framework is unnecessary; and (e) sections 272 and 274 impose no additional CPNI requirements on the Bell Operating Companies (BOCs) beyond those imposed by section 222.

B. The Clarification Order

9. On May 21, 1998, in response to a number of requests for clarification of the

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[25] *See* discussion *infra* Part VIII.C.

[26] *See* discussion *infra* Part VIII.D.

[27] *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Notice of Proposed Rulemaking, CC Docket No. 96-115, 11 FCC Rcd 12513 (1996) (*NPRM*).

[28] *CPNI Order*, 13 FCC Rcd at 8061. The Commission also issued a *Further Notice of Proposed Rulemaking* seeking comment on: (a) the customer's right to restrict carrier use of CPNI for all marketing purposes; (b) the appropriate protections for carrier information and additional enforcement mechanisms; and (c) the foreign storage of, and access to, domestic CPNI. *CPNI Order* at 8200-04, ¶¶ 203-10.

CPNI Order, the Common Carrier Bureau released a *Clarification Order*.[29] This order addressed several issues. It concluded that independently-derived information regarding customer premises equipment (CPE) and information services is not CPNI and may be used to market CPE and information services to customers in conjunction with bundled offerings.[30] In addition, it clarified that a customer's name, address, and telephone number are not CPNI.[31] Moreover, it stated that a carrier has met the requirements for notice and approval under section 222 and the Commission's rules if it has both provided annual notification to, and obtained prior written authorization from, customers with more than 20 access lines in accordance with the Commission's former CPNI rules.[32] Finally, it determined that carriers are not required to file their certifications of corporate compliance, which carriers are required to issue by the *CPNI Order*, with the Commission.[33]

C. The Stay Order

10. In the *CPNI Order*, the Commission required, among other things, that carriers develop and implement software systems that "flag" customer service records in connection

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[29] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Order, 13 FCC Rcd 12390 (1998) (*Clarification Order*). In addition to several *ex parte* requests for clarification, CTIA filed a request for deferral and clarification on April 24, 1998, and GTE filed a petition for temporary forbearance or, in the alternative, motion to stay on April 29, 1998. *Clarification Order*, 13 FCC Rcd at 12391, n.2. GTE has since withdrawn its motion. GTE Withdrawal of Petition (filed Dec. 2, 1998). CTIA requested that the Commission defer for 180 days the effective date of sections 64.2005(b)(1) and (b)(3) of the Commission's rules, insofar as they apply to CMRS. CTIA Request at 1. We did not stay these rules before they went into effect, and we decline to stay them now. *See* discussion *infra* Part III.C. These rules, however, are both modified herein. *See* Parts V.B. and C, *infra*. CTIA also requested that we confirm that CPNI refers only to information about the type and amount of service customers purchase, not the names and addresses of the customers themselves. CTIA Request at 4. In addition, CTIA requested that we clarify that the new "win-back" rule would not apply until after a customer is no longer receiving service from its original carrier. CTIA Request at 5. We also deny these requests as they are addressed elsewhere in this order and the *Clarification Order*. *See, e.g.*, discussion *infra* Parts V.C.2 and VIII.B.

[30] *Clarification Order*, 13 FCC Rcd at 12392-95, ¶¶ 2-7.

[31] *Clarification Order*, 13 FCC Rcd at 12395-97, ¶¶ 8-9.

[32] *Clarification Order*, 13 FCC Rcd at 12397-99, ¶¶ 10-12.

[33] *Clarification Order*, 13 FCC Rcd at 12399, ¶ 13. On July 22, 1998, three carriers filed petitions requesting reconsideration of the *Clarification Order*. Comcast Petition for Reconsideration (filed July 22, 1998); Vanguard Petition for Reconsideration and Clarification (filed July 22, 1998); GTE Petition for Reconsideration (filed July 22, 1998). The Common Carrier Bureau has referred these petitions to the full Commission, and as discussed more fully below, we hereby affirm the *Clarification Order*. *See* discussion *infra* Parts V.B. and VI.A. As such, the petitions are denied.

with CPNI and that carriers maintain an electronic audit mechanism ("audit trail") that tracks access to customer accounts.[34] The Commission chose to defer the enforcement of these rules until eight months after the effective date of the rules: January 26, 1999.[35] On September 24, 1998, however, the Commission stayed, until six months after the release date of an order addressing these issues on reconsideration, the enforcement of actions against carriers for noncompliance with applicable requirements set forth in the Commission's rules.[36]

IV. CONSISTENT TREATMENT FOR ALL CARRIERS

A. Incumbents vs. CLECs

11. Section 222(c)(1) restricts the ability of telecommunications carriers to use CPNI without customer approval. In the *CPNI Order*, we concluded that "Congress did not intend to, and we should not at this time, distinguish among carriers for the purpose of applying Section 222(c)(1)."[37] We found, based upon the language of the statute itself, that section 222 applies to all carriers equally and, with few exceptions, does not distinguish among classes of carriers.[38] Various parties on reconsideration, however, seek reversal of this conclusion.[39] One group of petitioners advocates that we impose stricter CPNI restrictions on incumbent carriers than competitors, based upon the greater potential for anticompetitive use or disclosure of CPNI by ILECs. We previously rejected this very argument in the *CPNI Order*.[40] These parties have not raised any arguments or facts that persuade us to reverse our conclusion that section 222 is intended to apply to all segments of the telecommunications marketplace regardless of the level of competition present in any segment. Accordingly, we affirm that section 222 does not distinguish between classes of carriers and applies to all carriers equally.

B. Wireline vs. Wireless

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[34] *CPNI Order*, 13 FCC Rcd at 8198-99, ¶¶ 198-99.

[35] *CPNI Order*, 13 FCC Rcd at 8200, ¶ 202.

[36] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Order, 13 FCC Rcd 19390, 19390-91, ¶ 2 (1998) (*Stay Order*).

[37] *CPNI Order*, 13 FCC Rcd at 8098, ¶ 49.

[38] *CPNI Order*, 13 FCC Rcd at 8098-99, ¶ 49.

[39] CompTel Petition at 10-15; LCI Petition at 7-15; e.spire Comments at 3-4; Comcast Reply at 4-5.

[40] *CPNI Order*, 13 FCC Rcd at 8098-99, ¶ 49.

12. Other petitioners highlight the differences between wireless and wireline regulation and request that the Commission treat CMRS carriers differently for purposes of the CPNI rules.[41] These petitioners assert that notwithstanding section 222's mandate to apply its restrictions to "all telecommunications providers," the Commission has often distinguished among various classes of providers when it was appropriate to do so.[42] In fact, as one petitioner notes, until Congress passed section 222, CMRS providers had not been subject to any Commission regulation in their use of CPNI.[43]

13. Moreover, several parties believe that the impact of compliance with the *CPNI Order* will cause CMRS providers to bear disproportionate burdens.[44] Comcast asserts that CMRS providers generally do not have a monopoly base or a nationwide market scope to cushion the impact of compliance.[45] Vanguard states that independent CMRS providers are hardest hit when compared to integrated companies, and that CMRS providers must bear these costs without the benefit of the ability to use CPNI to cross-market to large, installed bases.[46] Vanguard also states that these burdens--often in the form of additional regulation, including E911, local number portability, Year 2000 compliance, universal service requirements, and the conversion to digital technology--pose significant hardships.[47]

14. Again, we return to the text of section 222, which applies to "telecommunications carriers" generally.[48] Congress enacted section 222 at a time when the wireless industry had been subject to less regulatory requirements than wireline carriers. Congress was fully aware that CMRS providers, and CLECs for that matter, were to evolve in more competitive environments. Notwithstanding, there is nothing in the statute or its legislative history to indicate that Congress intended that the CPNI requirements in section 222 should not apply to wireless carriers. Given the opportunity to exclude competitive

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[41] *See generally* ALLTEL Petition; Comcast Petition; CTIA Petition; Omnipoint Petition; PCIA Petition; RAM Technologies Petition; Vanguard Petition.

[42] Comcast Petition at 6; CTIA Petition at 18; Vanguard Petition at 5-7 (e.g., providing for transition period under Section 254(k)'s universal service subsidy and tariff notice requirements for dominant and nondominant wireline carriers).

[43] Vanguard Petition at 1-2.

[44] Comcast Petition at 2-3, 8; CTIA Petition at 15-28.

[45] Comcast Petition at 2.

[46] Vanguard Petition at 8-9.

[47] Vanguard Petition at 7-8.

[48] 47 U.S.C. § 222.

carriers from the scope of section 222, we must give meaning to the fact that Congress did not exempt them. Moreover, the underlying policy objective of section 222 is to protect *consumers*, while balancing competitive interests. We believe that the privacy interests of CMRS customers are no less deserving of protection than those of wireline customers, although the differences in customer expectations may warrant different approaches. We note too that this reconsideration lightens the impact of compliance with the CPNI rules on all carriers by providing flexibility for technological differences in administrative systems with regard to the electronic safeguards rules, which should be beneficial to all companies, including independent CMRS providers.[49] Finally, we note that a few parties urge the Commission to forbear from enforcing CPNI obligations on CMRS providers generally.[50] We address these arguments in Part V.B.3.d., *infra*. Therefore, we deny those petitions for reconsideration that seek different treatment for CMRS carriers.

C. Small and Rural Carriers

15. Still other carriers request that we treat rural and small carriers differently.[51] As we noted in the *CPNI Order*, however, the Commission's CPNI rules apply to small carriers just as they apply to other sized carriers "because we are unpersuaded that customers of small businesses have less meaningful privacy interests in their CPNI."[52] Petitioners have not raised any new arguments or facts that persuade us to reverse this conclusion with respect to these carriers. Thus, we will not distinguish among carriers based upon the number or density of lines they serve either.

V. CARRIER'S RIGHT TO USE CPNI WITHOUT CUSTOMER APPROVAL

A. The Total Service Approach

1. Background

16. In the CPNI Order, the Commission addressed the instances in which a carrier

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[49] *See* discussion *infra* Part VII.

[50] 360° Communications Petition at 3, Bell Atlantic Petition at 20; *see also* Bell Atlantic Mobile Comments at 1; Arch Communications Comments at 7-9.

[51] *See* discussion *infra* Part VII.I. *See also* CenturyTel Reply at 2-5 ("Rural carriers should have the flexibility to continue their present and customary marketing and business practices with existing subscribers.").

[52] *See CPNI Order*, 13 FCC Rcd at 8214, ¶ 236. *See also* Independent Alliance Petition at 4-5 ("The Alliance is not seeking forbearance from section 222 obligations, recognizing fully that the privacy interests of the customers of small and rural carriers warrant protection.").

could use, disclose, or permit access to CPNI without prior customer approval under section 222(c)(1)(A).[53] Section 222(c)(1) provides that a telecommunications carrier that receives or obtains CPNI by virtue of its "provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable [CPNI] in the provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publication of directories."[54]

17. After considering the record, statutory language, history, and structure of section 222, we concluded that Congress intended that a carrier's use of CPNI without customer approval should depend on the service subscribed to by the customer. Accordingly, the Commission adopted the "total service approach" which allows carriers to use a customer's entire record, derived from complete service subscribed to from that carrier, to market improved services within the parameters of the existing customer-carrier relationship.[55] The total service approach permits carriers to use CPNI to market offerings related to the customer's existing service to which the customer presently subscribes.[56] Under the total service approach, the customer retains ultimate control over the permissible marketing use of CPNI, a balance which best protects customer privacy interests while furthering fair competition. Presented with the opportunity to permit or prevent a carrier from accessing CPNI for marketing purposes, the customer has the ability to determine the bounds of the carrier's use of CPNI.

2. Petitions for Reconsideration

18. GTE urges the Commission to reconsider the total service approach to allow carriers to use, without customer consent, CPNI derived from the provision of a package of telecommunications services in order to market other telecommunications services to which a customer does not subscribe.[57] This "package approach" is only a slight variation of the "single category approach," which we specifically analyzed and rejected in the *CPNI Order*.[58] The single category approach would have permitted carriers to use CPNI obtained from the

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[53] *CPNI Order*, 13 FCC Rcd at 8081-100, ¶¶ 27-51.

[54] 47 U.S.C. § 222(c)(1).

[55] *CPNI Order*, 13 FCC Rcd at 8080, 8083-84, 8087-88, ¶¶ 23-24, 30, 35.

[56] *CPNI Order*, 13 FCC Rcd at 8087-88, ¶ 35.

[57] GTE Petition at 26-29; U S WEST *ex parte* (filed January 22, 1999) (U S WEST supports GTE's position in this regard).

[58] *CPNI Order*, 13 FCC Rcd at 8083, 8085-8091, ¶¶ 29, 33, 39.

provision of any telecommunications service, including local or long distance or CMRS, to market any other service offered by the carrier, regardless of whether the customer subscribes to such service from that carrier.[59] Similarly, GTE's proposal would allow a carrier to market to customers any services or enhancements to the package that GTE offers, regardless of the services to which the customer has subscribed. For instance, GTE could decide, based on CPNI, that a customer who subscribes only to local service is a suitable candidate for a promotional cellular service plan, where the customer has not consented to such a solicitation.[60] GTE argues that "[i]n the case of packaged services, the customer will regard the package, not the components, as comprising his or her total service offering."[61] We reject GTE's proposal because, like the single category approach, it removes control over CPNI from the customer. GTE would define and change the contents of the package at its discretion. As a practical consequence, GTE's marketing would be limited only by what GTE chooses to include in the package, even if that includes everything that GTE is capable of offering.

19. We decline to grant GTE reconsideration on this issue because that would vitiate the total service approach and the attendant protection of a customer's sensitive information. The hallmark of the total service approach is that the customer, whose privacy is at issue, establishes the bounds of his or her relationship with the carrier. We note, however, that to the extent a customer already subscribes to a particular service or subscribes across services, GTE or any carrier can use the customer's CPNI to market or create enhancements to those services. Congress could not have intended an interpretation of section 222 that leaves the consumer without privacy protection. We concluded in the *CPNI Order*, and nothing has persuaded us otherwise here, that the total service approach best protects customer privacy while furthering fair competition. GTE seeks to use CPNI derived from the provision of certain telecommunications services to market other telecommunications services to which the customer does not subscribe. We conclude that this would not further the privacy goals that Congress sought to achieve in Section 222. Over time, the total service approach rewards successful carriers who offer integrated packages by enabling marketing in more than one category but in a manner that respects customer privacy.[62]

20. GTE requests, in the alternative, that the Commission adopt a rule that permits

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[59] *CPNI Order*, 13 FCC Rcd at 8083, ¶ 29.

[60] *See* GTE Petition at 27.

[61] GTE Petition at 27.

[62] We note that both Ameritech and BellSouth also request reconsideration of the total service approach to the extent it disallows them from using CPNI, without customer approval, to market to their customers bundled packages which include the telecommunications service being subscribed to and related CPE and/or information services. Ameritech Petition at 7; BellSouth Petition at 5-6. We deal with these requests *infra* at Part V.B.2.

the use of CPNI for the limited purpose of identifying customers from whom it would like to solicit express, affirmative approval to use their CPNI for marketing out-of-category services.[63] MCI supports the use of CPNI in this way.[64] We conclude that such use of CPNI is implicit in section 222(c)(1) because the solicitation of approval is a logical prerequisite to actually obtaining approval. The carrier's use of CPNI under these limited circumstances, therefore, is merely a part of the process of obtaining approval. Thus, the use of CPNI for solicitations of approval to use CPNI to market services outside the bounds of the existing customer-carrier relationship necessarily falls under the customer approval exception stated in section 222(c)(1).[65] We agree with GTE that customer privacy would not be diminished by such an interpretation because carriers must still obtain the customer's express consent before using the customer's CPNI for marketing to the customer or for any other purpose.[66] We note, moreover, that our interpretation serves customer privacy, convenience, and control as it allows carriers to identify customers more likely to be interested in approval solicitations, while preserving the requirement under section 222 that carriers obtain express, affirmative customer approval.

21. NTCA urges us to reconsider the total service approach because it is particularly disadvantageous to small, rural LECs looking to launch new service offerings.[67] We addressed and rejected this argument in the CPNI Order.[68] NTCA has presented no new evidence to persuade us that its members are disproportionately affected in any cognizable way by these requirements.

3. Petitions for Forbearance

22. Alternatively, GTE and Ameritech seek forbearance from the application of the

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[63] GTE Petition at 29.

[64] MCI Comments at 14.

[65] Section 222(c)(1) states that "[e]xcept as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B)services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories." 47 U.S.C. § 222(c)(1).

[66] GTE Petition at 29.

[67] NTCA Petition at 3-4; NTCA Comments at 2. NTCA also points out that the number of carriers subject to CPNI restrictions has increased from nine to several thousand. NTCA Petition at 3.

[68] *CPNI Order*, 13 FCC Rcd at 8099-100, ¶ 50 (rejecting similar arguments raised by SBT and USTA). *See also* discussion *supra* Part IV.C.

total service approach to the marketing of out-of-category packages or service enhancements to customers.[69] After careful review, we believe the forbearance test is not met. Forbearance under section 10 of the Act[70] is required where:

> (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
>
> (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
>
> (3) forbearance from applying such provision or regulation is consistent with the public interest.

Section 10(b) provides that, in making the determination whether forbearance is consistent with the public interest, the Commission must consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services.

23. *Section 10(a)(1).* GTE and Ameritech assert that the ability to offer service packages will not result in unreasonable or discriminatory rates.[71] According to GTE, any service package will necessarily include at least one service that the Commission recognizes as competitive (*i.e.*, long distance or CMRS) and is supplied by nondominant carriers.[72] As such, the market will assure that competitive elements of the service packages are priced reasonably. Moreover, under current regulation noncompetitive services will also be available on an unbundled basis from a dominant carrier at rates subject to state and federal regulation.[73] The net result, GTE contends, is that service packages will not involve

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[69] Ameritech Petition at 5-8 (the Commission should forbear from the application of Section 222(c)(1)(A)); GTE Petition at 30. While 360° Communications also mentions the total service approach in its petition for forbearance, it argues for forbearance from enforcement of CPNI rules generally for CMRS providers. 360° Communications Petition at 3-6. Consequently, we address 360° Communications arguments in greater detail, *infra*, at V.B.3.d.

[70] 47 U.S.C. § 160.

[71] Ameritech Petition at 6; GTE Petition at 30.

[72] GTE Petition at 30.

[73] GTE Petition at 30.

unreasonable or unlawfully discriminatory charges or terms.[74] Ameritech adds that years of carrier use of CPNI has not led to adverse consequences.[75]

24. The primary focus of the CPNI rules is not, nor ever has been, intended to ensure reasonable rates or practices. Therefore, we determine that enforcement of the total service approach is not necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable and are not unjustly or unreasonably discriminatory.

25. *Section 10(a)(2).* GTE asserts that prohibiting the use of CPNI without approval to market package enhancements is not necessary to protect consumers.[76] Ameritech believes CPNI protection is not necessary where, like here, the use is consistent with customer expectations.[77] Customers, according to GTE, will welcome enhancements to the package that are tailored to their needs as determined by analyzing their CPNI.[78]

26. We conclude that the second criterion for forbearance is not met because customers' privacy interests would not be adequately protected absent the total service approach. GTE and Ameritech would have us forbear from enforcing the total service approach when consumer protection is a primary concern of section 222. Specifically, the customer approval process for the use of CPNI is necessary to protects customers' privacy expectations because, as stated in the CPNI Order, we do not believe that we can properly infer that a customer's decision to purchase one type of service offering constitutes approval for a carrier to use CPNI to market other service offerings to which the customer does not subscribe.[79] Nor are we aware of any other law, regulation, agency or state requirement that would substitute for the effectiveness of our approach. The total service approach protects customer privacy expectations by placing the control over the approval process in the hands of the customer. The total service also approach protects customers in many instances where they would not realize potentially sensitive, personal information had been accessed or used. The GTE and Ameritech approaches lack this crucial element of consumer protection.

27. *Section 10(a)(3).* GTE believes forbearance is in the public interest because of the reduction in carriers' administrative costs to communicate with customers where a carrier

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[74] GTE Petition at 30.

[75] Ameritech Petition at 6.

[76] GTE Petition at 30.

[77] Ameritech Petition at 6.

[78] GTE Petition at 30.

[79] *CPNI Order*, 13 FCC Rcd at 8110, ¶ 63.

can use CPNI to market across service categories without the need for customer approval.[80] GTE also heralds the improved ability of CLECs to introduce new, improved and branded combinations of competitive services and products.[81] The public also benefits, according to GTE and Ameritech, from receiving information without artificial constraints based on service categories.[82]

28. We find that forbearance would not be in the public interest. The privacy goals of the statute are not met where carriers can use CPNI without customer approval to sell products and services outside the existing customer-carrier relationship. Although reducing the administrative costs to carriers may assist these companies in competing with other carriers, we find that any potential benefit is outweighed by the need to protect customer privacy. Customers who are interested in obtaining more information can arrange to do so easily by granting consent for their carriers' use of CPNI.

29. Pursuant to section 10(b) of the Act, we have evaluated whether forbearance from the total service approach will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services. We agree that, as a general matter, reducing carriers' administrative and regulatory costs promotes competitive market conditions and would improve the ability of new entrants to introduce new, improved combinations of competitive services and products. However, we are concerned that the GTE and Ameritech proposals, which eliminate the boundaries we have established for the use of CPNI, may unreasonably deprive other telecommunications carriers the opportunity to compete for a customer's business. The ability to use CPNI from an existing service relationship to market new services to a customer bestows an enormous competitive advantage on those carriers that currently have a service relationship with customers, particularly incumbent exchange carriers and interexchange carriers with a large existing customer base. This, in turn, poses a significant risk to the development of competition. For this reason, as well, we cannot find that forbearance is in the public interest.

4. Requests for Clarification

30. Several petitioners request clarification of aspects of the total service approach and its application in specific contexts. We address these requests below.

a. Multiple Lines and Carriers

[80] GTE Petition at 31.

[81] GTE Petition at 31.

[82] Ameritech Petition at 6; GTE Petition at 31.

31. MCI requests clarification as to whether the total service approach should be applied on a subscriber line-by-line basis or to the subscriber's services overall.[83] To illustrate the significance of this distinction, MCI uses the example of a customer with two lines, each line having a different presubscribed interexchange carrier (PIC).[84] MCI queries whether each PIC is considered the customer's sole long-distance carrier for that line, so that the carrier must limit to that line its use of CPNI to market other long distance service or whether the carrier can market long distance services to both lines. MCI poses a second, related question, whether a customer can have more than one carrier in any given service category, thus allowing both carriers to market other services in the same category to that customer.[85]

32. We believe that the total service approach applies to the *customer's* total telecommunications service subscription, and proper use of CPNI is not necessarily limited to the line from which it was derived. Section 64.2005(a) of our rules permits a telecommunications carrier to use CPNI for the purpose of marketing service offerings among the categories of service already subscribed to by the customer from the same carrier.[86] Although MCI proposes to use CPNI from one line to market to another line of the same customer, the use of CPNI is permissible because it remains within the category of service. As to MCI's second question, we do not limit a customer's choice to select more than one carrier in a given service category. For the same reasons cited above, where the use of CPNI remains within a service category, a carrier is able to market that same service to the customer without the need for express customer approval. In this manner, a carrier's attempt to garner more of the customer's business is pro-competitive and does not impinge on a customer's privacy.

b. Codification of Service Categories

33. MCI and CommNet request that the Commission explicitly state that all telecommunications services fall within three groupings--local, interLATA, and CMRS.[87] MCI believes that this will assist carriers in deciding whether a particular service feature fits within the boundaries of the carrier's total service offering.[88]

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[83] MCI Petition at 45.

[84] MCI Petition at 45.

[85] MCI Petition at 44-45.

[86] 47 C.F.R. § 64.2005(a).

[87] CommNet at Petition at 10-11 (Commission should define and codify "total service relationship" as constituting "zero, one, two or three" categories of service); MCI Petition at 43-44.

[88] MCI Petition at 43-44.

34. We decline to do so because it would have the effect of grafting onto the total service approach one of the critical flaws of the so-called "three category" approach. As explained in greater detail in the *CPNI Order*, the three category approach parsed telecommunications services into the three traditional service distinctions--local, interLATA, and CMRS.[89] Given the dynamic nature of the telecommunications industry, we can not assume that all services necessarily fall into such categories. We believe the total service approach is sufficiently flexible to incorporate new and different categories without periodic reviews to ascertain whether changes in the competitive environment should translate into changes in service categories.[90] Rather, we agree with U S WEST that it is unnecessary to modify the total service approach in this regard or to further codify the three service categories in the rules.[91]

c. Use of CPNI to Market Paging

35. In the *CPNI Order*, the Commission determined that CMRS should be viewed in the entirety, when considering the "total service approach."[92] CommNet urges the Commission to revise its rules to make it clear that the service categories to which the "total service" relationship applies are only local exchange service, interexchange service, and CMRS, so that a paging carrier could use CPNI to market cellular service and *vice versa*.[93] U S WEST objects on the grounds that the language of the current rule was taken directly from the statute and that the categories may blur over time and may disappear as customers migrate to single source providers.[94]

36. We find that our rules are clear that under the total service approach, a CMRS carrier may use CPNI to market any CMRS service, including paging and cellular service.[95] Therefore, no revision of the rules is required.

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[89] *CPNI Order*, 13 FCC Rcd at 8082, ¶ 28.

[90] *CPNI Order*, 13 FCC Rcd at 8105-06, ¶ 58.

[91] U S WEST Comments at 20; *see also*, 47 C.F.R. § 64.2005(a) which provides that: "[a]ny telecommunications carrier may use, disclose, or permit access to CPNI for the purpose of providing or marketing service offerings among the categories of service *(i.e., local, interexchange, and CMRS)* already subscribed to by the customer from the same carrier, without customer approval." (emphasis added).

[92] *CPNI Order*, 13 FCC Rcd at 8091, ¶ 40, n.149.

[93] CommNet Petition at 10-11.

[94] U S WEST Comments at 20-21.

[95] *See* 47 C.F.R. § 64.2005(a).

d. IntraLATA Toll Services

37. In the *CPNI Order*, the Commission concluded that insofar as both local exchange carriers and interexchange carriers currently provide short-haul toll, it should be considered part of both local and long-distance service.[96] We further concluded that permitting short-haul toll to "float" between categories would not confer a competitive advantage upon either interexchange or local exchange carriers.[97] MCI concludes that the provision of short-haul toll may only be considered part of carrier's "primary service category" and requests that we make such a clarification.[98]

38. We agree with MCI that our prior conclusion requires clarification. MCI argues that if a local exchange carrier is providing local service, then it may use a customer's local service CPNI to market intraLATA toll to that customer, and vice-versa, and if an interexchange carrier is providing long distance service to a customer, then it may use that customer's long distance CPNI to market intraLATA toll to him or her, and vice versa.[99] We reject MCI's proposal that we link short-haul toll to the carrier's "primary service category." Rather, we conclude that short-haul toll shall be considered as falling within the category of service the carrier is already providing to the customer. For example, a carrier may use CPNI from short-haul toll to market local services only if the carrier is already providing local service. Long distance carriers providing intraLATA toll service, however, need obtain customer approval to use intraLATA toll CPNI to market local service. Likewise, local exchange carriers would need customer approval to use intraLATA toll CPNI to market interLATA long distance service. GTE argues that such a rule is unfair and anticompetitive because it would prohibit local carriers from using intraLATA toll CPNI to market long distance services, but would allow long distance carriers to market intraLATA services or vice versa.[100] As explained above, however, in GTE's example, long distance carriers need to obtain a customer's permission to use intraLATA toll CPNI to market local services. In this way, the rule is fair to both interexchange and local exchange carriers and treats them symmetrically.

B. Use of CPNI to Market Customer Premises Equipment and Information Services

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[96] *CPNI Order*, 13 FCC Rcd at 8104-05, ¶ 57.

[97] *CPNI Order*, 13 FCC Rcd at 8104-05, ¶ 57.

[98] MCI Petition at 47.

[99] MCI Petition at 47.

[100] GTE Comments at 14.

1. Background

39. Section 222(c)(1) states that, "[e]xcept as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains [CPNI] by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable [CPNI] in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories."[101] In the *CPNI Order*, we concluded that Congress intended that section 222(c)(1)(A) govern carriers' use of CPNI for providing *telecommunications services* and that section 222(c)(1)(B) governs carriers' use of CPNI for *non-telecommunications services*.[102] Based upon the language of section 222(c)(1), we further concluded that: (1) inside wiring, CPE, and certain information services do not fall within the scope of section 222(c)(1)(A) because they are not "telecommunications services;"[103] and (2) CPE and most information services do not fall under section 222(c)(1)(B) because they are not "services necessary to, or used in, the provision of such telecommunications service."[104] We now find that the phrase "services necessary to, or used in, the provision of such telecommunications service" should be given a broader reading than the one given in the *CPNI Order*. The record produced on reconsideration persuades us that a different statutory interpretation is permissible, and importantly, would lead to appropriate policy results consistent with the statutory goals. Therefore, we conclude that section 222(c)(1)(B) allows carriers to use CPNI, without customer approval, to separately market CPE and many information services to their customers. We further clarify that the tuning and retuning of CMRS units and repair and maintenance of such units is a service necessary to or used in the provision of CMRS service under section 222(c)(1)(B). Finally, we deny petitioners' requests that we forbear from applying these restrictions for related CPE and information services.[105]

2. Petitions for Reconsideration

40. *Customer Premises Equipment and Information Services under Section 222(c)(1)*. We grant the petitions for reconsideration that argue that CPE and certain information services are "necessary to, or used in, the provision of" telecommunications services, and therefore use of CPNI derived from the provision of a telecommunications

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[101] 47 U.S.C § 222(c)(1).

[102] *CPNI Order*, 13 FCC Rcd at 8095, ¶ 45.

[103] *CPNI Order*, 13 FCC Rcd at 8095, ¶ 45.

[104] *CPNI Order*, 13 FCC Rcd at 8116, ¶ 71.

[105] *See* discussion *infra* Part V.B.3.

service, without customer approval, to market CPE and information services would be permitted under section 222(c)(1)(B).[106] Under our previous interpretation, the exception was narrowly construed, resulting in very few services for which CPNI could be shared.[107] Indeed, we rejected all CPE because it was not a "service" and most information services[108] because they were not necessary to or used in the carrier's provision of the telecommunications service.[109] While this interpretation is not inconsistent with the statutory language, we are persuaded that the better interpretation is that the exception includes certain products and services provisioned by the carrier with the underlying telecommunications service to comprise the customer's total service. This is because those related services and products facilitate the underlying telecommunications service and customers expect that they will be used in the provisioning of that service offering.[110] Our new interpretation accords with the Commission's stated intention in the *CPNI Order* to revisit and if necessary revise its conclusions regarding customer expectations as those expectations changed in the marketplace with advancements in technology or as new evidence of the evolution of customer expectations becomes available to the Commission.[111] Such evidence has now been made available to us by the record developed on reconsideration.

41. When evaluated as a whole, the exception can be reasonably interpreted to include those products used in the provision of telecommunications, including directories and CPE. First, we find statutory support for this interpretation through the only example Congress included in the exception—the publishing of directories.[112] As described in the *CPNI Order*, directories are "necessary to and used in" the provision of service because without access to phone numbers, customers cannot complete calls.[113] A directory is not a "service,"

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[106] BellSouth Petition at 5; Comcast Petition at 12; Frontier Petition at 10-11; Omnipoint Petition at 7-8; TDS Petition at 8-9; Vanguard Petition at 9-10.

[107] *CPNI Order*, 13 FCC Rcd at 8095, ¶ 45.

[108] *CPNI Order*, 13 FCC Rcd at 8115, ¶ 69, n. 253.

[109] *CPNI Order*, 13 FCC Rcd at 8096, ¶ 46.

[110] The Commission has previously found that when examining the functional differences between integrated service packages and individual services, it was required to take into account "the perspectives of both the nature of the services involved and customer perceptions of the services." *AT&T Communications Revisions to Tariff FCC No. 12*, 6 FCC Rcd 7039, 7042(1991), *aff'd sub nom. Competitive Telecommunications Association v. FCC*, 998 F.2d 1058 (1993).

[111] *See CPNI Order*, 13 FCC Rcd at 8080, ¶ 24, n.98.

[112] 47 U.S.C. § 222(c)(1)(B).

[113] *CPNI Order*, 13 FCC Rcd at 8119, ¶ 74.

but rather, like CPE, is a product. Consistent with the statutory exception, however, the "*publishing*" of the directory is a service—the service by which the carrier provisions the product necessary to, or used in, the customer's telecommunications service. Thus, Congress' publishing of directories example supports including those products as well as services provisioned by the carrier that are used in and necessary to the customer's telecommunications service.[114] We believe that our previous interpretation construed the term "services" in isolation from the phrase "necessary to, or used in." While it is obvious that CPE itself is not a service, the provision of CPE is a service that is necessary to, or used in the provision of the underlying telecommunications service. Customers cannot make, or complete, calls without CPE. This is consistent with Congress' example of the publishing of directories in section 222. Therefore, this finding concerning CPE is limited to section 222. Also, the CPE that is included in this exception is limited to CPE that is used in the provision of the telecommunications service from which the CPNI is derived.

42. Second, our broader statutory interpretation appropriately protects the customer's reasonable expectations of privacy in connection with CPNI, which many petitioners argue is the appropriate test for determining the limitations on the use of CPNI without a customer's approval.[115] On the one hand, as described below, our new interpretation sets appropriate limits, consistent with the statutory language, on those information services and CPE "necessary to, or used in," the customer's service. In this way, our new interpretation advances the principle of customer control that we set forth in the *CPNI Order*.[116] On the other hand, the record establishes that our prior restrictive interpretation, excluding all CPE and information services, leads to anomalous results and does not advance the principle of customer convenience embodied in the provision.[117] For example, we concluded that carriers could use CPNI to market caller ID to their customers, but could not use it to market caller ID CPE that is necessary for the customer to be able to receive the service.[118] We are thus persuaded that CPE and many information services

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[114] BellSouth Petition at 8; Comcast Petition at 13; PrimeCo Petition at 5.

[115] Ameritech Petition at 2-4; BellSouth Petition at 6-10; NTCA Petition at 5-7; Omnipoint Petition at 8; USTA Petition at 5.

[116] *CPNI Order*, 13 FCC Rcd at 8101-02, ¶ 53.

[117] *CPNI Order*, 13 FCC Rcd at 8101-02, ¶ 53.

[118] Bell Atlantic Petition at 7; BellSouth Petition at 8-9; NTCA Petition at 6. Other petitioners also argue that such a reading allows carriers to offer digital subscriber lines (DSL) or asymmetric digital subscriber lines (ADSL) but not the modems which are necessary for a subscriber to use such lines. Bell Atlantic Petition at 6; GTE Petition at 15-18; TDS Petition at 8-10.

properly come within the meaning of section 222(c)(1)(B) as we describe below.[119]

43. In the wireless context, our regulation of CMRS providers and the history of the industry has allowed the development of bundles of CPE and information services with the underlying telecommunications service.[120] Thus, information services and CPE offered in connection with CMRS are directly associated and developed together with the service itself. Indeed, we are persuaded by the record and our observations of the development of the CMRS market generally that the information services and CPE associated with CMRS are reasonably understood by customers as within the existing service relationship with the CMRS provider.[121] Customers expect to have CPE and information services marketed to them along with their CMRS service by their CMRS provider.[122] Accordingly, we conclude that such CPE and information services come within the meaning of "necessary to, or used in," the provision of service. In the CMRS context, carriers should be permitted to use CPNI, without customer approval, to market information services and CPE to their CMRS customers.

44. The wireline industry has developed somewhat differently from CMRS and, while the analysis is the same, the results concerning how carriers may use CPNI accordingly differ from the wireless industry. The provision of CPE, like the publishing of directories, is a service which is used in and generally necessary to the provision of the telecommunications service. For at least the past ten years, all wireline companies have been able to market CPE along with their telecommunications service.[123] Petitioners argue that by erecting a CPNI approval requirement with respect to CPE, the Commission frustrates customers' one-stop shopping expectations and stymies carriers' abilities to offer complete service solutions that customers want and have come to expect.[124] Simply put, customers expect their carriers to

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[119] In response to RAM Technologies' request for clarification, given our revised statutory interpretation, we find that the tuning or retuning of wireless subscriber units, and the repair and maintenance of those units are *services* "necessary to, or used in" the provision of wireless telecommunications services. RAM Petition at 3.

[120] *See Bundling of Cellular Customer Premises Equipment and Cellular Service*, CC Docket No. 91-34, Report and Order, 7 FCC Rcd 4028 (1992).

[121] Alltel Petition at 6-7; Bell Atlantic Petition at 6; Comcast Petition at 14-15; CTIA Petition at 37; Frontier Petition at 11; GTE Petition at 10-12; Metrocall Petition at 7-9; PrimeCo Petition at 6-9; RAM Petition at 7-9.

[122] AT&T Petition at 5-8; PageNet Petition at 4-6; Vanguard Petition at 9-11.

[123] *In the Matter of Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies*, 2 FCC Rcd 143 (1987), *aff'd sub nom. Illinois Bell Telephone Company v. FCC*, 883 F.2d 104 (1989).

[124] SBC Petition at 4.

market CPE to them.[125] No evidence has been produced on the record which shows that allowing wireline carriers to market CPE to their customers, using CPNI without customer consent, violates customers' expectations. We are convinced that such usage by carriers would be beneficial to customers as new and advanced products develop. Therefore, wireline carriers should be permitted to use CPNI, without customer approval, to market CPE to their customers.

45. Within the broader reading of the statute, we find that certain wireline information services should also be considered necessary to, or used in, the provision of the underlying telecommunications service. In the *CPNI Order*, the Commission listed several information services that it believed should not be considered necessary to, or used in, the underlying telecommunications service: call answering, voice mail or messaging, voice storage and retrieval services, and fax storage and retrieval services.[126] Applying the broader reading of the statute, along with the new evidence on the record, we now believe that all of these services should be considered necessary to, or used in, the provision of the underlying telecommunications service because customers have come to depend on these services to help them make or complete calls.[127] The record indicates that customers have come to expect that their service provider can and will offer these services along with the underlying telecommunications service.[128] Therefore, carriers may use CPNI, without customer approval, to market call answering, voice mail or messaging, voice storage and retrieval services, and fax storage and retrieval services.[129]

46. We continue to exclude from this list, as the Commission did in the *CPNI Order*, Internet access services.[130] Despite contrary claims from some petitioners,[131] there is no convincing new evidence on the record that shows that such services are necessary to, or used in, the making of a call, even in the broadest sense. There is also no evidence,

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[125] LCI Petition at 8-10; SBC Petition at 2-6.

[126] *CPNI Order* 13 FCC Rcd at 8116-17, ¶ 72.

[127] Bell Atlantic Petition at 7-9; BellSouth Petition at 10-11; SBC Petition at 7; TDS Petition at 6.

[128] Bell Atlantic Petition at 7-9; BellSouth Petition at 10-11; SBC Petition at 7; TDS Petition at 6.

[129] LECs and CMRS providers may continue to use CPNI, without customer approval, to market the former "adjunct-to-basic" services listed in the *CPNI Order*. *CPNI Order* 13 FCC Rcd at 8117-18, ¶ 73. *See also* 47 C.F.R. § 64.2005(c)(3).

[130] We note that the Internet access services being addressed here are the dial-up services. We have previously determined that xDSL services are telecommunications services. *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 13 FCC Rcd 24012, 24029-24030 (1998).

[131] Bell Atlantic Petition at 8; TDS Petition at 7.