



**MCI Communications
Corporation**

1801 Pennsylvania Avenue, NW
Washington, DC 20006

DOCKET FILE COPY ORIGINAL

RECEIVED

NOV - 1 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 1, 1999

Magalie Roman Salas
Secretary, Room TW-A325
Federal Communications Commission
The Portals, 445 Twelfth Street, SW
Washington, DC 20554

Re: 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

Dear Ms. Salas:

Enclosed herewith for filing are the original and four (4) copies of MCI WorldCom's
Petition for Further Reconsideration regarding the above-captioned matter.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI
WorldCom Petition for Further Reconsideration furnished for such purpose and remit
same to the bearer.

Sincerely yours,

Don Sussman

Enclosure
DHS

- Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

NOV - 1 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

MCI WORLDCOM PETITION FOR FURTHER RECONSIDERATION

Mary L. Brown
MCI WORLDCOM, Inc.
1801 Pennsylvania Avenue, NW
Washington, DC, 20006
(202) 887-2551

November 1, 1999

Table of Contents

- I. Introduction 1
- II. The Commission Should Modify its "Interpretation" of Section 222(c)(1)(A) to Require Access to Customer Feature Information 3
 - A. Feature Information Is Necessary to Provision New Local Customers .. 5
 - B. Feature Information Is Necessary to Enable Comparison Shopping 9
- III. The Commission Must Definitively Conclude That an Incumbent's Failure to Provide Access to CPNI to a New Entrant That Has Obtained Customer Consent to Obtain it Is a Violation of Sections 201(b), 251(c)(3) and 251(c)(4) of the Act 10
- IV. A New Entrant Must Be Able to Warn a Customer That Failure to Provide CPNI Consent May Affect the Carrier's Ability to Get Service Provisioned 12
- V. Other Aspects of the Commission's Decision Require Further Reconsideration 13
 - A. Customer Consent Rule Should Allow Carrier Some Flexibility in Conveying Consent Information to Customers 13
 - B. Long Form Consent Requirements for Inbound Calls Are Confusing to Customers and Should Be Eliminated 14
 - C. Presubscribed Interexchange Carrier (PIC) Information Is Not CPNI .. 16
 - D. Commission Should Adopt a Definitive Rule Governing "Winbacks" .. 17
- AFFIDAVIT OF SHERRY LICHTENBERG I

- Summary

The Federal Communications Commission's (Commission) reconsideration decision on September 3, 1999 in the above-captioned dockets establishes a narrow, unfortunate, and unsupportable reading of section 222 of the Telecommunications Act of 1996 in the following respect – that a new entrant may obtain access to customer proprietary network information (CPNI) only after a customer has decided to switch its service to the new provider.¹ MCI WorldCom, Inc.'s (MCI WorldCom) market entry in New York State during 1999 has illuminated a fundamental problem in attempting to sell local service against the incumbent if this crabbed and cramped rule is allowed to stand. Customers more often than not have only a partial grasp of the features associated with their local service. A new entrant's inability to access the prospective customer's information during a marketing conversation means that new entrants cannot offer valid comparisons to prospective customers. In addition, a new entrant's inability to access feature information in ordering local service on behalf of the customer causes unnecessary delays and errors in providing local service. This failure of information adversely harms the new entrant's ability to compete, and is completely at odds with customer expectations. The customer *wants* its new carrier to order local service

¹ Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115; 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, released September 3, 1999 ("CPNI Reconsideration Order), at paras. 86-92.

correctly the first time. The customer *wants* comparisons in order to make an informed decision.

MCI WorldCom respectfully requests that the Commission reconsider its ruling. New entrants should be able to access local customer feature information during the marketing call for the purpose of providing price and service comparisons to a prospective customer and for the purpose of submitting local orders for service with the incumbent. This is fully consistent with customer expectations and necessary to fulfill the goals of the Telecommunications Act of 1996 – to create a competitive market for all telecommunications services. Moreover, a modification of the rule is required since customer expectations of privacy do not exist in a conversation where the customer is actively seeking information that would allow an informed purchasing decision.

MCI WorldCom is not seeking access to call detail information. A customer would not expect details about when, where, and to whom they placed calls to be readily available to other carriers. Nor is call detail information strictly necessary in order for a new entrant to provide an accurate description and basis for comparison of its services relative to the incumbent. But feature information, such as Caller ID, call blocking features, three-way calling, and other features, is necessary and expected in order for the new entrant to order local service arrangements accurately and to provide a meaningful basis for the customer to compare MCI WorldCom's local service with the incumbent's.

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

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

MCI WORLDCOM PETITION FOR FURTHER RECONSIDERATION

I. Introduction

The Federal Communications Commission's (Commission) reconsideration decision on September 3, 1999 in the above-captioned dockets establishes a narrow, unfortunate, and unsupportable reading of section 222 of the Telecommunications Act of 1996 in the following respect – that a new entrant may obtain access to customer proprietary network information (CPNI) only after a customer has decided to switch its service to the new provider.² MCI WorldCom, Inc.'s (MCI WorldCom) market entry in

² Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended, CC Docket No. 96-149,

New York State during 1999 has illuminated a fundamental problem in attempting to sell local service against the incumbent if this crabbed and cramped rule is allowed to stand. Customers more often than not have only a partial grasp of the features associated with their local service. A new entrant's inability to access the prospective customer's information during a marketing conversation means that new entrants cannot offer valid comparisons to prospective customers. In addition, a new entrant's inability to access feature information in ordering local service on behalf of the customer causes unnecessary delays and errors in providing local service. This failure of information adversely harms the new entrant's ability to compete, and is completely at odds with customer expectations. The customer *wants* its new carrier to order local service correctly the first time. The customer *wants* comparisons in order to make an informed decision.

MCI WorldCom respectfully requests that the Commission reconsider its ruling. New entrants should be able to access local customer feature information during the marketing call for the purpose of providing price and service comparisons to a prospective customer and for the purpose of submitting local orders for service with the incumbent. This is fully consistent with customer expectations and necessary to fulfill the goals of the Telecommunications Act of 1996 – to create a competitive market for all telecommunications services. Moreover, a modification of the rule is required since customer expectations of privacy do not exist in a conversation where the customer is actively seeking information that would allow an informed purchasing decision. MCI

Order on Reconsideration and Petitions for Forbearance, released September 3, 1999 (“CPNI Reconsideration Order”), at paras. 86-92.

WorldCom proposes that competitors get access to such feature information upon asking, and receiving an affirmative response to, an oral "short-form" permission.

MCI WorldCom is not seeking access to call detail information. A customer would not expect details about when, where, and to whom they placed calls to be readily available to other carriers. Nor is call detail information strictly necessary in order for a new entrant to provide an accurate description and basis for comparison of its services relative to the incumbent. But feature information, such as Caller ID, call blocking features, three-way calling, and other features, is necessary and expected in order for the new entrant to order local service arrangements accurately and to provide a meaningful basis for the customer to compare MCI WorldCom's local service with the incumbent's.

II. The Commission Should Modify its "Interpretation" of Section 222(c)(1)(A) to Require Access to Customer Feature Information

In its CPNI Reconsideration Order, the Commission states that it is "not persuaded" that the Act permits disclosure of CPNI to another carrier without consent because the customer would not expect such consent.³ According to the Commission, there are no new facts or arguments before it that would allow it to modify its original 1998 conclusion that section 222(d)(1) requires consent in all cases.⁴

³ Id. at para. 89.

⁴ 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).

Significantly, the Commission's decision acknowledges that, in interpreting and implementing section 222, there is some ambiguity in the statutory language that requires the Commission to exercise judgment. The CPNI Reconsideration Order states that the Commission has "inferred" the requirement that prior consent is required before CPNI can be disclosed outside the existing relationship. "We reasoned that such an inference is appropriate because the customer is aware that his or her carrier has access to CPNI, and, through subscription to the carrier's service, has implicitly approved the carrier's use of CPNI within the existing relationship."⁵

The Commission, however, cites no evidence or produces any basis for its inference, beyond its role as an expert agency. This is significant because at the time its original decision was rendered in early 1998, and during the reconsideration pleading cycle in the spring of 1998, there was virtually no local entry by new entrants for residential customers. In 1999, MCI WorldCom took a series of steps to enter the local market in New York, with the intention of competing for residential customers who are today served by Bell Atlantic. While there exist several unresolved issues that prevent MCI WorldCom's full-fledged entry in New York at commercial volumes,⁶ MCI WorldCom is today Bell Atlantic's chief competitor in the residential local market in New York.

In these intervening months, MCI WorldCom has learned first-hand the critical

⁵ CPNI Reconsideration Order at para. 89.

⁶ In the Matter of Application by New York Telephone Company (d/b/a Bell Atlantic - New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc., for Authorization To Provide In-Region, InterLATA Services in New York, Docket No. 99-295, Comments of MCI WorldCom, Inc., 3-4 (filed October 19, 1999).

role that access to customer feature information plays in entering local markets that have formerly been the exclusive province of incumbent local exchange carriers. Two key facts have emerged from our experience: (1) the vast majority of MCI WorldCom's new local customers want the exact same types of services from MCI WorldCom as they received from Bell Atlantic; and (2) most customers are unable to recall and describe during a sales call every feature that makes up those services. To ensure that customer demands are met as quickly and conveniently as possible, carriers should be permitted access to customer CPNI based on a simple oral, short-form consent, *i.e.*, "May I view your customer service record?"

A. Feature Information Is Necessary to Provision New Local Customers

As is discussed in the accompanying affidavit by MCI WorldCom's Sherry Lichtenberg, the vast majority of new local customers want the same types of services they are used to receiving. To date, MCI WorldCom has received more "migrate as is" orders from local customers than orders that specify new service arrangements. MCI WorldCom estimates that approximately two-thirds of our orders specify "migrate as is."⁷ This means the customer wants exactly the same features as he or she receives from the incumbent - caller ID, three-way calling, call blocking, etc.

Without access to the codes indicating the exact services and features the customer has previously received from the incumbent carrier, the process of taking an order from a customer is needlessly complex and consumer "un-friendly." MCI

⁷ Lichtenberg Affidavit at ¶6.

WorldCom must engage in an inevitably imprecise and time-consuming process of trying to help the customer remember and accurately describe all aspects of their previous service. In our experience, customers do not recall accurately the features that are currently a part of their local telephone service.⁸ In fact, the large number of available features and their many variations render it virtually impossible for most consumers to know with specificity the exact features they have ordered. For example, customers often do not remember whether they have Caller ID with Name or Caller ID with Name and Number. There are two versions of speed dialing, four types of Call Forwarding, two ways of ordering multiple rings on a line, and more than a half a dozen call blocking options. In our experience, it is the exception to find a consumer who actually knows precisely his or her local service configuration.

The result of not having access to this essential “installation” CPNI is that customer’s expectations of service are not met. In some cases, their initial service order is not completed at all, or in other cases, the customer is frustrated by needless delay as his or her new carrier must re-specify the correct list of features when provisioning service with the incumbent. Such delays and problems prevent customers from receiving the service they wanted, a particularly harmful result when their previous service has been terminated, and interferes with the successful development of a competitive local market.

MCI WorldCom has identified several types of problems that result from the highly restricted CPNI environment in which we operate. First, the different “flavors” of

⁸ *Id.* at ¶9.

features present challenges. Without access to the customer's existing feature information, it is very possible to make errors in attempting to provision the customer exactly as that customer is provisioned today. The customer may not remember the exact feature, or we might err in entering the data.

Second, using Caller ID as an example, customers who incorrectly recall that they have Caller ID with name and number, but whose serving office does not support this functionality, will not be installed by the incumbent. In these cases, the incumbent rejects the order back to MCI WorldCom. From a customer's perspective, this is frustrating because they have elected a new carrier and want service from that new carrier. From the new entrant's perspective, the additional cost of handling the rejection, determining the cause, correcting the information, and resubmitting an order, imposes substantial acquisition costs that operate to increase barriers to entry in the local market.

Finally, the absence of readily-available feature information delays provisioning. MCI WorldCom's inability to specify an "as is" migration of the customer can add days to the completion of a customer's order. For example, if a customer orders Caller ID (the single most popular feature in New York) and if MCI WorldCom could inform Bell Atlantic that the customer is already receiving Caller ID as part of the existing service, then Bell Atlantic could process the order (in theory) in 48 hours. Under current rules, however, MCI WorldCom is not able to provide this information to Bell Atlantic. Bell Atlantic, who receives an "as specified" migration must check the switch that serves the customer to determine whether it is already capable of providing the Caller ID service. This process requires an additional 3 to 4 days, unnecessarily delaying the order's

completion.

Another significant problem occurs due to the popularity of incumbent-provided voice mail. As a result of regulatory decisions interpreting the Telecommunications Act, MCI WorldCom cannot provision voice mail when we are serving a customer from the UNE-platform in New York. If a customer forgets to tell us that he or she has voice mail, and specifies an "as is" migration, that customer will lose voice mail functionality. Customers perceive this as an error on the new entrant's part, and become frustrated with their decision to choose a competitor. Obviously, this flawed process is the direct result of our inability to see the customer's features.

Significantly for the purposes of the Commission's interpretation of section 222(c)(1)(A), customers expect that their new carrier will know or have access to feature information. In MCI WorldCom's experience, customers either already expect that their new provider has access to their old service record or have no privacy interest in keeping it from them.⁹ Customers will have to tell the new carrier about the very same elements in order to establish their new service and in any case, the nature of these elements are not they types of information (e.g., service plan and features) that customers have any concern about their new carrier knowing. If MCI WorldCom had access to the customer's service record showing exactly (by code) the services the customer has received in the past, it could quickly define and place the order, with a high level of confidence that the customer's expectations would be met exactly. The Commission should reconsider its interpretation of section 222(c)(1)(A) in light of MCI WorldCom's real-world experience

⁹ Lichtenberg Affidavit at ¶10.

in marketing local service in New York. MCI WorldCom respectfully requests that the Commission modify its rule to permit competitors access to CPNI upon asking (and receiving an affirmative answer to) a simplified, short-form oral consent, i.e., "may I access your customer service record?"

B. Feature Information Is Necessary to Enable Comparison Shopping

In addition to accessing existing local feature information to provision service once the customer has decided to switch carriers, this same information is needed early in the sales conversation in order to enable consumers to make informed comparisons about whether they want to consider switching carriers. To a consumer, the ability to choose a local telephone provider is a new experience. Consumers naturally want to weigh the new and untried experience of local service provided by MCI WorldCom against whatever experience they have with their incumbent provider. For most residential customers, this boils down to variations on the following two questions – can I get local service that is cheaper than what I have today and can I get local service that is better (more responsive, better billing) than what I have today.

Without access to accurate feature information on the customer's current local service configuration, it is impossible for the new entrant to accurately answer the first question. While it is possible to provide to the customer the monthly cost of basic local phone service from MCI WorldCom, we cannot provide an accurate side-by-side comparison of the customer's bill using the incumbent and using our service unless we have an accurate description of the customer's features.

MCI WorldCom is not seeking-unfettered access to Bell Atlantic customer's CPNI. First, we are not seeking access to call detail information. Second, we are not seeking access to feature information in the absence of a request by the consumer for some comparative information that would assist the consumer in making a purchase decision. It is only in the case where the consumer has indicated that he or she *wants* a comparative price quote that feature information should be available to the customer service representative.

The CPNI Reconsideration Order, by sharply restricting access to CPNI creates a business practice that is contrary to customer expectations. The Commission should modify its interpretation of section 222(c)(1)(A) to permit carriers, to obtain access to feature information for the purpose of responding to consumer requests for comparative price information.

III. The Commission Must Definitively Conclude That an Incumbent's Failure to Provide Access to CPNI to a New Entrant That Has Obtained Customer Consent to Obtain it Is a Violation of Sections 201(b), 251(c)(3) and 251(c)(4) of the Act

In the CPNI Reconsideration Order, the Commission states that an incumbent's failure to provide access to CPNI to a new entrant who has obtained customer consent "may" be a violation of section 201(b), as well as section 251 (c)(3) and (4) of the Act.¹⁰ The Commission needs to be specific in order to eliminate any doubt about a new entrant's ability to access CPNI records with customer permission. Without access to CPNI, and especially feature information, the process of provisioning a local customer is

¹⁰ CPNI Reconsideration Order at para. 86.

difficult and likely to be error-prone. - -

Furthermore, in MCI WorldCom's experience, incumbent local exchange carriers can readily provide access to CPNI today. In the case of Bell Atlantic, CPNI fields are hidden from MCI WorldCom customer service representatives when we provision a customer. It is less burdensome - not more - to provide the new entrant with the entire customer service record. For the reasons explained above, providing that record would result in a more efficient process that enables the new entrant to provision the customer correctly right from the start. In light of the incumbents' established ability to provide this information, and its essential role in enabling customers' new service orders to be properly executed, the Commission should declare it an unjust and unreasonable practice under section 201(b) for them to refuse to do so. ¹¹

Even more significantly, the inability of a competitor to access the customer service record containing CPNI, once the competitor has the customer's permission, is a major impediment to provisioning the customer. The Commission should modify its view that failure to provide CPNI in this circumstance "may" be a section 251(c)(3) and (4) violation, and declare explicitly that failure to provide such information is a violation. First, the customer has given permission to the new carrier to obtain the information - so there can be no issue of customer expectations. Second, it cannot be that the Act requires

¹¹ The Commission should also state explicitly that it is a violation of the antidiscrimination requirements of section 202(a) for an incumbent to refuse to provide new entrants with real-time electronic access to customer service records and the CPNI contained in them, when the new entrant has the customer's consent to access that information, or at least on the same terms as it would provide this information to itself or an affiliate.

the provisioning by the incumbent of unbundled network elements (alone or in combination) without the practical ability for the new entrant to place an accurate order. This does not treat CPNI as an “unbundled network element”, a view which the Commission rejected in the CPNI Reconsideration Order, but instead rightfully recognizes that CPNI is required in order to make the provisioning of unbundled network elements possible on a mass scale. The unfortunate use of the word “may” allows the incumbents to argue, as they will in the upcoming negotiations for “second round” interconnection agreements, that there is no definitive Commission requirement that they provide CPNI even if the new entrant has the customer’s permission to obtain it. The Commission needs to derail these arguments as soon as possible.

IV. A New Entrant Must Be Able to Warn a Customer That Failure to Provide CPNI Consent May Affect the Carrier’s Ability to Get Service Provisioned

As stated in the affidavit of Sherry Lichtenberg, attached, MCI WorldCom has experienced delays in provisioning customers who fail to provide CPNI consent when we attempt to provision them. These delays are predictable, appear not to be addressable with improved operational support systems, and relate primarily to our inability to accurately migrate customers with the same features as they received from Bell Atlantic.

In the CPNI Reconsideration Order, the Commission found that there was no evidence that failure to provide CPNI consent would disrupt the installation of service. As a result, the Commission declined to permit new entrants to warn customers that their failure to approve the disclosure of CPNI to a new carrier may disrupt the installation of

service.¹² Our market entry experience in New York during 1999 demonstrates that the predictions of delays and disruptions were accurate. Our inability to access the customer service record results in delays of 3 to 4 days, on average, relative to the incumbent's ability to provision the customer.¹³ In light of this evidence, the Commission should modify its decision and permit new entrants to fully and accurately inform customers of the consequences of withholding consent.

V. Other Aspects of the Commission's Decision Require Further Reconsideration

A. Customer Consent Rule Should Allow Carrier Some Flexibility in Conveying Consent Information to Customers

The Commission should clarify its decision regarding the specific notice to be provided in obtaining a customer's consent to view CPNI. Carriers should be able to use any terms that are adequate to convey to customers the full scope of the CPNI that may be viewed and the entities that may view it. The CPNI Reconsideration Order reaffirms that carriers must inform customers of the types of CPNI they intend to use and the entities that will receive it.¹⁴ Upon reconsideration, MCI WorldCom requests that the Commission modify its decision to confirm that such notice may be given through the use of broad, general terms that are adequate to convey the full range of types of CPNI to be viewed and the full range of entities that may view it. Customers should not have to listen to a "laundry-list" recitation of each of the various individual types of CPNI that

¹² CPNI Reconsideration Order at para. 91.

¹³ Lichtenberg Affidavit at ¶13.

¹⁴ CPNI Reconsideration Order, ¶ 115.

could be viewed and each individual company and affiliate that may view it.

In order to be able to obtain a one-time comprehensive consent for the use of all types of CPNI by all of a carrier's affiliates, the carrier must be able to use comprehensive language. Naming each individual type of CPNI individually is unnecessarily cumbersome and burdensome on both the carrier and the customer. Naming each individual entity is equally or more burdensome but also virtually impossible, as corporations routinely reorganize their structures in ways their customers care nothing about. Customers gain nothing material from a listing of the various types of information contained in their service record, that they would not get from being asked if the carrier can view their service record. Nor do customers benefit from being asked for consent each time the list of a carriers' affiliates changes when they would just as soon consent once to the sharing of their CPNI with all of a carriers' affiliates. Finally, while customers might want to restrict the sharing of CPNI to a particular carrier affiliate, carriers should have the option of taking a "no consent" answer instead of trying to record and track such restricted consents – whose use for marketing purposes may be very limited.

B. Long Form Consent Requirements for Inbound Calls Are Confusing to Customers and Should Be Eliminated

In the CPNI Reconsideration Order, the Commission provided a list of our items that it says are necessary to provide effective notice to customers of the call-long use of CPNI during an inbound call.¹⁵ In MCI WorldCom's view, the fourth of these

¹⁵ CPNI Reconsideration Order, n. 511.

requirements is entirely unnecessary – the requirement that asks the carrier to explain that if CPNI consent is denied, the customer’s services will not be affected. Particularly in the context of an inbound call, where the customer has initiated the communication and is looking to the carrier for help, there is simply no reason to believe that customers have any concern that their services will be affected if they do not agree to the carrier’s using their CPNI to market a new and different kind of service to them. In this context, there is simply no reason to introduce a confusing and illogical statement into the customer communication.¹⁶

Moreover, the first and second requirements, although reasonable in theory, are simply impractical and ineffective in practice. The Commission stated that in order for a customer to provide informed consent carriers must advise each customer -- prior to soliciting permission to use his or her CPNI pursuant to Section 222(d)(3) -- of specific CPNI the carrier wishes to use and the purpose for which the CPNI will be used. Particularly in the context of an inbound call, customers are simply not interested in taking the time to listen to a lengthy description of the specific types of CPNI that a carrier may look at and how the carrier may use it, in connection with marketing another service to them. Customer privacy concerns are adequately protected by a broad statement indicating the scope of the CPNI that may be used and the general purpose for which it will be used (e.g., may I look at your long distance account information in connection with explaining our wireless service offerings?). There is no compelling justification for requiring more.

¹⁶ Lichtenberg Affidavit at ¶15.

C. Presubscribed Interexchange Carrier (PIC) Information Is Not CPNI

The Commission must reconsider its conclusion that PIC freeze status constitutes CPNI as defined in Section 222(f)(1)(A). CPNI is defined as:

(A) information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and

(B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information.¹⁷

PIC freeze information has nothing to do with the quantity of telecommunications service purchased, or its amount of use. It obviously has nothing to do with “destination” of services purchased. Nor is PIC freeze information a technical configuration. A PIC freeze has no technical content at all – it exists in a database that has nothing to do with how calls are routed, configured, or billed, and simply prevents another carrier from initiating a PIC change without the customer’s permission. Nor does the PIC freeze relate to the “type” of service offered. There is no distinction between service offered to customers with PIC freezes and services offered to those without PIC freezes. Moreover, it is not apparent that customers have any privacy interest in restricting access to knowledge of the fact that their carrier selections have been frozen. The Commission should conclude that PIC freeze information is not CPNI.

¹⁷ CPNI Reconsideration Order, ¶ 148.

D. Commission Should Adopt a Definitive Rule Governing "Winbacks"

In its decision on Subscriber Carrier Selection Changes,¹⁸ the Commission said that an executing carrier is forbidden from using PIC change information to initiate a winback activity. In the CPNI Reconsideration Order, the Commission said that retention marketing using carrier information, and occurring before a carrier changes providers, is prohibited.¹⁹ These are helpful statements that will provide guidance to the industry as competition develops. However, the Commission should take one additional step to secure the promise that a consumer's selection will be honored. The Commission should establish a presumption that any winback efforts are deemed unlawful if undertaken before the new carrier has actually begun providing service. At a minimum, the presumption should apply before the latter of the date on which the old carrier receives a "loss migration notice" indicating that the customer's service has changed to another provider or the date that the old carrier's service actually ends. Carriers who initiate winback efforts through information gleaned from their retail operations should understand that the burden is on them, if challenged, to demonstrate that the winback effort did not arise from their possession of carrier information.

For the reasons discussed above, MCI WorldCom respectfully requests that the Commission modify its decision in the CPNI Reconsideration Order to the extent discussed above.

¹⁸ Subscriber Carrier Selection Changes Provision of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-129, 14 FCC 1508, at 1567-9 (1998).

¹⁹ CPNI Reconsideration Order at para. 77.