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Before The

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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	CC Docket No. 96-149
Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, As Amended	

OPPOSITION OF SBC COMMUNICATIONS INC. TO MCI WORLDCOM PETITION FOR FURTHER RECONSIDERATION

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SBC Communications Inc., on its behalf and on behalf of its subsidiaries, files its opposition to "MCI WorldCom Petition for Further Reconsideration," showing as follows:

ARGUMENT AND CITATION OF AUTHORITIES

A. The Commission's rulings on Section 222(c)(1)(A) strike the proper balance between customer-privacy issues and the needs of a competitive marketplace.

MCI seeks to have the Commission reconsider its Section 222(c) rulings. Specifically, MCI wants the Commission to allow it to use a "simple, short-form consent" — "May I view your customer service record?" — to access Customer Proprietary Network Information held by another carrier during the marketing of its services to potential customers.[1] MCI's argument is based on the contention that "feature information" is necessary to enable comparison shopping

[1] The issue raised by MCI is different from the question of the appropriate form of customer consent for an in-bound marketing call to a customer's existing carrier.

and to provision services after the sale. MCI contends that customers "do not recall accurately the features that are currently a part of their local telephone service."[2] The flaw in MCI's argument is that Section 222 is not meant to facilitate competition but rather to protect customer privacy. The Commission's present rule strikes the appropriate balance between customer privacy and the needs of a competitive marketplace.

After all is said and done, MCI is seeking to keep the customer from making an informed decision on the release of CPNI. MCI repeatedly assures the Commission that "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 [sic]."[3] If this is so, then how hard can it be for MCI to obtain the proper authorization from the customer to access the customer's service record? Given the assumption that the customer wants the new provider to have the information, it is reasonable to believe that the customer would respond positively to an informative request for authorization. "May I view your customer service record?" is so vague as to make informed decision making impossible.

While all carriers can empathize with MCI's desire to keep the in-bound marketing call quick, convenient, and customer friendly, MCI's proposal would gut the protections of Section 222 by removing its heart: informed consumer decision making.[4] To the extent that MCI wants and needs CPNI to install service for a new customer, the Commission's Order has already addressed this issue.[5] To oppose MCI's request, one does not need to suggest that MCI has an

[2] MCI Petition for Further Reconsideration ("Petition"), p. 6.

[3] Petition, p. 8. Although unclear in its presentation, it appears that MCI intended to say that the customers have no privacy interest in keeping their old service record from the new provider.

[4] SBC is not suggesting that a short-form consent is inappropriate for an in-bound marketing call from a customer to his or her existing carrier.

[5] *In the Matter of the Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, *Second Report and Order and Further Notice of Proposed Rulemaking*, FCC 98-27, ¶¶ 84, 85 n.316, and 166 (rel. Feb. 26, 1998) ("First Report and Order"); *In the Matter of the 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 of Reconsideration and Petition for Forbearance*, FCC 99-223, ¶ 92 (rel. Sept. 3, 1999) ("Order on Reconsideration").

anti-consumer ulterior motive in mind; one only has to be concerned that anti-consumer effects may result from taking informed consumer decision making out of the CPNI release process.

B. The Commission need not hold that, regardless of circumstances, an ILEC's failure to provide CPNI to a CLEC is always and everywhere a violation of Sections 201(b), 251(c)(3), and 251(c)(4).

In the First Report and Order, the Commission noted that, "although an incumbent carrier is not required to disclose CPNI pursuant to section 222(d)(1) or section 222(c)(2) absent an affirmative written request, local exchange carriers may need to disclose a customer's service record upon the oral approval of the customer to a competing carrier prior to its commencement of service as part of the LEC's obligations under sections 251(c)(3) and (c)(4)."[6] In the Order on Reconsideration, the Commission correctly noted that the Commission had not found in the First Report and Order that CPNI was an unbundled network element and reserved determination of questions related to the application of Section 251 to the reopened proceedings in CC Docket 96-98.[7] Still, MCI seeks to have the Commission hold that an ILEC's failure to provide access to CPNI is a priori a violation of Sections 201(b), 251(c)(3), and 251(c)(4).

The Commission correctly reserved judgment on the obligations of Section 251(c) to the reopened proceedings in CC Docket 96-98. MCI is free to participate in that docket and urge its position there.

As for Section 201, it applies to all carriers — not just ILECs. Section 201 does not lend itself to being divided between ILECs and CLECs — having one rule applicable to ILECs and another to CLECs. What's more, Section 201 makes unlawful "unjust and *unreasonable*" charges, practices, classifications, and regulations. Thus, it would be imprudent to judge a priori that any particular practice was unreasonable in all circumstances. The better practice — and the one chosen by the Commission — is to make a determination on a case-by-case basis. It is in the context of particular cases that the question of whether a carrier's failure to provide access to

[6] First Report and Order, ¶ 84.
[7] Order on Reconsideration, ¶ 92.

CPNI was unreasonable is best suited for resolution.

There is nothing "unfortunate" about the use of the word "may" in the Commission's orders. "May" is the appropriate word to use when describing possible violations of Section 201. MCI is seeking an inappropriate corruption of Section 201 jurisprudence.

C. SBC supports the Commission's determination that Presubscribed Interexchange Carrier (PIC) Information is CPNI.

MCI too narrowly construes § 222(f)(1). PIC information is information that clearly "relates" to quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by customers of telecommunications carriers.[8] It also pertains to "information contained in the bills pertaining to . . . telephone toll service received by a customer of a carrier." [9] Thus, the Commission was correct in finding that PIC information is CPNI.

SBC also notes that, regardless of whether it is CPNI, PIC information is confidential information. The customer is entitled to assume that its telecommunications carrier will guard this information from casual disclosure. Customers have a privacy interest in restricting access to all PIC information, whether it is the PIC choice or the PIC-freeze status. It is for an informed customer to choose whether this information should be disclosed to third parties.

D. A definitive rule governing "winbacks" is unnecessary and ill-advised.

In suggesting that the Commission rule that any efforts to win back customers are presumptively deemed unlawful if undertaken before the new carrier has actually begun providing service, MCI is seeking to stymie competition. In its Order on Reconsideration, the Commission rightly decided that, if a carrier has independently learned from its retail operations that a customer is switching to another carrier, "the carrier is free to use CPNI to persuade the

[8] 47 U.S.C. § 222(f)(1)(A).
[9] 47 U.S.C. § 222(f)(1)(B).

customer to stay, ..."[10] The Commission reasoned that use of CPNI in a retention campaign falls under the implied consent conferred by Section 222(c)(1), but using protected carrier information to launch a retention campaign would violate Section 222(a) and harm competition.

By seeking a presumption of guilt, MCI is not seeking to protect either CPNI or carrier-to-carrier information but rather to impede competition. MCI hopes that the presumption of guilt will deter carriers from engaging in campaigns to win back customers for fear of having to fight off formal complaints. MCI hopes to be relieved of having to have any evidence of impropriety before filing a formal complaint. With that burden lifted, MCI can frustrate competition by the threat of formal complaints. After all, even if the carrier has indisputable proof that the source of its information was its retail operations and not its wholesale operations, the presumption of guilt will give MCI carte blanche to file formal complaints anyway. When, after the expensive and time-consuming process is complete and the defendant-carrier is victorious, MCI can just shrug it off because MCI had no obligation to have evidence of impropriety before filing a complaint.

MCI's suggestion should be denied because it does nothing to protect carrier-to-carrier information and does much to harm competition.

[10] Order on Reconsideration, ¶ 79.

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CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing "OPPOSITION OF SBC COMMUNICATIONS INC." in CC Docket No. 96-115 and CC Docket No. 96-149 has been filed this 2nd day of December, 1999 to the Parties of Record.

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