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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

December 15, 1999

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

Re: 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. As Amended, CC Docket No. 96-149

Dear Ms. Salas:

Enclosed herewith for filing are the original and seven (7) copies of MCI WorldCom's Reply Comments regarding the above-captioned matter.

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

Sincerely yours,

Mary L. Brown

Enclosure

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

REPLY COMMENTS OF MCI WORLDCOM, INC.

A broad array of commenters support the modifications to the customer proprietary network information (CPNI) rules discussed in MCI WorldCom, Inc.'s (MCI WorldCom's) Petition for Further Reconsideration. The petition urges the Commission to modify several rules: (1) new entrants who are competing against incumbent local exchange carriers should be able to access a limited subset of customer proprietary network information once a customer has indicated an interest in switching his or her service to a new carrier and has given an oral, short form consent for the purpose of initiating service or obtaining a price quote; (2) permission to advise new customers that withholding consent could have an adverse effect on service delivery; (3) streamline the requirement that the carrier name its affiliates and provide a detailed explanation of how CPNI would be used; (4) establishment of a presumption that a winback occurring before a new carrier has initiated service stems from unlawful conduct; and (5) reversal of the determination that presubscribed interexchange carrier freeze (PIC freeze) information is

CPNI. In all of these cases, MCI WorldCom offered modifications in a form that fully protects CPNI as defined by statute, in a manner fully consistent with the privacy concerns evidenced in section 222.¹

New entrants must access limited subset of CPNI to offer local service

Many of the commenters opposing MCI WorldCom's proposed modification of the CPNI consent rules, to enable new entrants to access a limited subset of CPNI based on an oral, short form consent, resort to the creation of artificial "straw men" that they then proceed to knock down seriatim. Unfortunately, the "straw men" mischaracterize MCI WorldCom's proposal.

For example, Bell Atlantic wrongly argues that MCI WorldCom has sought "carte blanche" access to CPNI records.² MCI WorldCom seeks access to limited information contained in the incumbent's "customer service record" for the express purpose of either (1) placing an accurate local service order that correctly reflects a service configuration the customer wants; and (2) to enable the customer, at the customer's request, to have a meaningful understanding of the service the new entrant could offer and the total price for local service based on the features taken. In both cases, the proposal would permit no access to CPNI information at all until the customer granted consent based on an oral, short form permission. Moreover, MCI

¹ On November 30, 1999, the United States Court of Appeals for the 10th Circuit voted 6-5 to deny rehearing en banc of a previous 10th Circuit decision overturning the Commission's CPNI rules. The Court's mandate issued on December 7, 1999. Should the Commission seek review of the decision at the Supreme Court, one possible outcome of such review is the reinstatement of the Commission's CPNI rules. MCI WorldCom therefore submits these reply comments in the event the Commission elects to pursue appeal, and the CPNI rules are eventually reinstated through further legal action. US West, Inc. V. FCC, 182 F.2d 1224 (10th Cir. 1999) (Petition for Rehearing En Banc denied November 30, 1999).

² Bell Atlantic Opposition at 1.

WorldCom in no event would seek access to perhaps the most sensitive CPNI -- usage information. All that is sought is service configuration information. This can hardly be characterized as an open-ended invitation for a new entrant to obtain CPNI against the customer's will or in violation of the statute. MCI WorldCom specifically would seek the approval of the customer, as is required by section 222(c)(1).

Bell Atlantic also states that MCI WorldCom could choose to migrate customers to our service by submitting local service orders to Bell Atlantic "as is." Bell Atlantic argues that it is only due to our own processes that migrate customers using an "as specified" direction on the local service record.³ MCI WorldCom agrees with Bell Atlantic that we have elected to use an "as specified" direction, which requires us to list each feature the customer has ordered. An "as is" migration would leave us in the unhappy position of delivering local service with some unknown quantity of features. We would not be able to adequately respond to customer service inquiries or bill for services. Customers do not recall with specificity the complex features that they purchase from Bell Atlantic.⁴ Without starting fresh, with a "migrate as specified" order, MCI WorldCom would have no way of knowing which features the customer had in order to set up a customer service record.⁵ Nor could we ask the customer to obtain the information from its

³ Bell Atlantic Opposition at 5.

⁴ AT&T Comments at 3, Sprint Comments at 2, and RCN Comments at 3.

⁵ MCI WorldCom understands that a technical solution to this issue may exist in what is called a "fielded completion notice" which would specify each feature a customer receives. If a new entrant receives such a notice from the incumbent after placing a local service order, it would be possible in theory to "migrate as is." We would note that Bell Atlantic in its comments on the petition does not volunteer to provide this notice, and at this time we do not receive it from any incumbent with whom we do business. In any event, we have no experience with this possible solution or its accuracy.

existing bill it receives from the incumbent because the level of detail on a customer's bill is insufficient.⁶

In another example, BellSouth states that the incumbent could not disclose CPNI to a new entrant because the new entrant does not have a customer relationship with the end user.⁷ But section 222(c)(1) requires no such relationship. All that is required under the Act is customer consent to disclose, which MCI WorldCom's proposal entails.

Other parties argue that the Petition raises arguments that are "asked and answered."⁸ However, the Reconsideration Order⁹ simply does not address evidence that was developed by MCI WorldCom during 1999 and filed on an ex parte basis. The simple fact is, the record on reconsideration, at least as to the interaction of local competition and CPNI rules, was nonexistent because reconsideration pleadings arrived at the Commission in 1998. MCI WorldCom did not enter the New York local market for residential service until 1999, and only then began to experience how excessively broad CPNI rules frustrated consumer preferences. MCI WorldCom submitted ex partes as early as January 1999 on this issue, but these were not discussed in the Reconsideration Order. The factual record was available to the Commission, but the Commission did not act on it in its reconsideration decision.

⁶ GTE Comments at 3.

⁷ BellSouth Opposition at 2.

⁸ Bell Atlantic Opposition at 1-2; GTE Opposition at 2.

⁹ 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.

Nor should MCI WorldCom's suggested modification on this issue be stretched to include oral short form consent in any situation where any carrier is seeking to initiate service with a new customer.¹⁰ In the context of establishing local service, new entrants face a unique set of challenges when attempting to place local service orders with the incumbent. Customers tell MCI WorldCom to provide them with exactly what they have today from the incumbent. Without local service configuration information -- e.g., feature information contained on the customer service record -- the task of establishing service correctly and accurately as the customer wants service, is significantly more difficult. This same set of factors does not apply where a long distance carrier is seeking to establish service with a new customer, and no party appears to claim symmetry between the two circumstances.

Finally, MCI WorldCom suggested that the Commission determine that the failure to provide access to CPNI necessary to establish local service (and with the customer's consent) is a violation of sections 201(b), 251(c)(3) and 251(c)(4) of the Act. Some parties would prefer that this issue be resolved in a complaint context.¹¹ MCI WorldCom suggests that this is an issue that does not require the Commission to adduce evidence and weigh facts -- this is a legal issue that is far more efficient to resolve by rulemaking than case-by-case decision-making. There is simply no reason to defer this issue to an adjudicatory setting.

PIC Freeze Information Is Not CPNI

MCI WorldCom's arguments that PIC freeze information does not constitute CPNI won broad support from commenters. According to US West, there is no harm in disclosing PIC

¹⁰ BellSouth Opposition at 4-5.

¹¹ Bell Atlantic Opposition at 3.

freeze status to another carrier, since the carrier cannot itself change a frozen PIC -- only the customer can in consultation with its serving local exchange carrier.¹² US West outlines several legal interpretations of section 222 that permit PIC freeze disclosure, e.g., that PIC freeze information is information that is necessary or used in the provision of service under section 222(c)(1)(B), or that section 222(d)(2) permits carriers to disclose information to protect against fraudulent or unlawful subscription to services.

No other commenter seems to be able to explain why a PIC freeze falls within the statutory definition of CPNI. BellSouth offers its theory that PIC freeze information has to do with the “technical configuration” of the service.¹³ This appears completely unsupportable on the plain language of the statute. A technical configuration of a service might include configuration of a loop to support x.DSL. But a PIC freeze is most certainly not technical -- it is simply an administrative directive to obtain affirmative customer consent before authorizing a PIC change.

Moreover, the Reconsideration Order’s pronouncement classifying “PIC freeze” information as CPNI directly conflicts with the Commission’s early pronouncement about the need to share PIC freeze information. In its December 1998 decision adopting anti-slamming rules, the Commission decided not to require that local exchange carriers share PIC freeze information, but it encouraged local exchange carriers to make that information available nonetheless:

[W]e see benefit to the consumer -- in terms of decreased confusion and inconvenience -- where carriers would be able to

¹² US West Opposition at 13. See also TRA Comments at n.9; Sprint Comments at 2; AT&T Comments at 4-5.

¹³ BellSouth Opposition at 5.

determine whether a freeze is in place before or during an initial contact with a customer. [W]e encourage LECs to consider whether preferred carrier freeze indicators might be a part of any operational support system that is made available to new providers of local telephone service.¹⁴

This is the better reading of PIC freeze information and should be reinstated as the Commission “rule”.

Consent Rules Are Confusing to Customers

MCI WorldCom requested that the Commission reconsider two aspects of its announced consent rules: that the Commission modify the requirement that forces carriers to recite a laundry list of CPNI that they will use and the entities that will use it, and the requirement for long-form consent on inbound calls. Many parties supported these comments.¹⁵ As stated in the Petition, a more consumer-friendly approach would be to permit carriers to convey the general types of CPNI that would be used if consent is given, and a description of the full range of entities that would view it. Similarly, long-form consent on an inbound call is cumbersome and confusing to customers. A short form consent would be permissible under the statute and be sufficient to protect privacy interests.

Carriers Should Be Able To Warn Consumers

A number of parties agreed that if a customer withholds consent for a new carrier to

¹⁴ Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 94-129, released December 23, 1998 at para. 133.

¹⁵ GTE Opposition at 7-8, US West Opposition at 1; Bell Atlantic Opposition at 6-7; RCN Comments at 4; TRA Comments at 5.

obtain CPNI, that failure to withhold could adversely affect provisioning.¹⁶ Parties further agreed that the customer should be warned of possible adverse consequence. The adverse consequences could be as simple as a delay in provisioning or possible problems with the interoperability of specific features. Nothing in the comments of opposing parties warrants a different conclusion. Bell Atlantic argues, for example, that if feature availability information for a serving wire center is available in its pre-order systems, there should be no issue. But if the customer forgets to name a feature that he currently has, or mis-states the feature (so that MCI WorldCom enrolls the customer in one type of Caller ID when the customer wants another), the customer will not immediately receive the local service he wants. The customer will need to re-contact MCI WorldCom, who will then need to place another order with the incumbent, and so on -- the delays in provisioning are not imaginary.

Commission Should Adopt A Presumption To Guard Against Unlawful Winbacks

Several of the incumbent local exchange carriers argue that the Commission should not adopt MCI WorldCom's suggestion to establish a presumption that if a winback occurs prior to the time a new carrier begins offering service, the winback activity is unlawful. Carriers complain that there is no basis for establishing such a presumption.¹⁷ In MCI WorldCom's view, such a rule would strongly discourage potentially unlawful winback activity, and would place the burden on the carrier who won the customer back to defend itself if challenged. Since winbacks have a negative impact on competition, the Commission should do all it can to minimize

¹⁶ US West Opposition at 9-10 (“[a] customer’s refusal to grant access to CPNI information could well “affect” not only the customer’s existing services but the newly-ordered one, as well”).

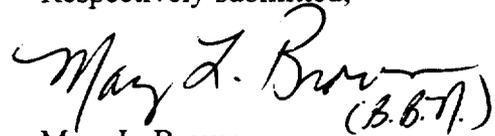
¹⁷ SBC Opposition at 5; BellSouth Opposition at 6.

opportunities for unlawful winbacks. The incumbents have nothing to fear-so long as their winback activity comports with Commission requirements.

Conclusion

For the above stated reasons, MCI WorldCom urges the Commission to modify its CPNI rules in accordance with the Petition for Further Reconsideration filed in the above-captioned docket.

Respectively submitted,


Mary L. Brown (B.B.T.)

Dated: December 15, 1999

Certificate of Service

I, Barbara Nowlin do hereby certify that on this 15th day of December, 1999, copies of the foregoing MCIWorldCom reply comments were served by first-class U.S. mail, postage prepaid, to the following persons at the addresses listed below.

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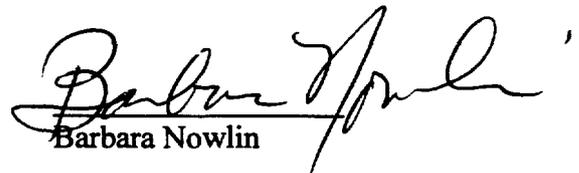
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