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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

May 18, 2000

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 - 12<sup>th</sup> Street, SW -TW - A325  
Washington, DC 20554

Re: **Oral Ex Parte/Status Meeting with FCC Staff  
Regarding Customer Proprietary Network Information  
(CC Docket Nos. 96-115/96-149)**

Dear Ms. Roman Salas:

Today, on behalf of the United States Telecom Association (USTA), USTA's Legal and Regulatory Affairs Vice President and General Counsel, Lawrence Sarjeant and I met with Attorneys Margaret Egler and Eric Einhorn of the Federal Communications Commission's Common Carrier Bureau regarding matters pertaining to the above-referenced docket.

Specifically, USTA sought to ascertain the current status of the FCC's CPNI rules and regulations in light of (1) the United States Court of Appeals for the Tenth Circuit's August 18, 1999 decision vacating the FCC's CPNI rules and regulations, stemming from the FCC's Second Report and Order and Further Notice of Proposed Rulemaking in the relevant proceeding; (2) the FCC's Order on Reconsideration, as adopted by the Commission on August 16, 1999, in this proceeding; and (3) the FCC's April of 2000 action before the United States Supreme Court.

In the latter regard, the Department of Justice, acting on the FCC's behalf, filed a brief in opposition to the Competition Policy Institute's (CPI) petition for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit in the matter of US West, Inc. v. FCC. After the appeals court vacated the FCC's rules and regulations and denied the FCC's petition for rehearing, CPI sought review of the decision by the United States Supreme Court (Case No. 99-1427). The FCC's Brief, in that matter, argues against the High Court's review of the lower-court decision; and recommends that the FCC be allowed to pursue further rulemaking proceedings concerning Section 222; and the Commission's CPNI rules and regulations.

In relevant part, the FCC's Brief states:

Nevertheless, certiorari is not warranted at this time to review the court of appeals' decision. The court of appeals struck down only the FCC's regulation, and did not hold that Section 222 itself is invalid. Moreover, the court made clear that it was not directing that the FCC adopt any particular regime on remand, and it therefore did not deny the

FCC discretion to devise an approval requirement that will fulfill the 1996 Act's goals of protecting customer privacy and promoting competition. To the extent the court of appeals' decision was based on its perception that the administrative record was inadequate to sustain the validity of a particular scheme to regulate use of CPNI, proceedings on remand may also address that concern. [FCC Brief at 11; citation omitted.]

At the meeting with FCC Staff, USTA learned that the FCC will apply its interpretation of Section 222 of the Telecommunications Act, as amended, as articulated in the FCC's Reconsideration Order in the event of an enforcement action brought on a complaint filed pursuant to Section 208 of the Act. In that regard, FCC Staff explained that the Reconsideration Order was not being viewed by the Agency as having the force and effect of a final rule.

Additionally, USTA was informed that the FCC is currently awaiting the status of the High Court's decision before it will take any further rulemaking action addressing CPNI. In that regard, it was explained to USTA that if the Court opts against reviewing the case, the FCC will decide how it will proceed in revisiting its rules and regulations under Section 222. Staff provided that the Commission is evaluating whether it will establish a rulemaking to address all of the rules; or whether it will limit its approach to issues pertaining to CPNI "opt-in" and "opt-out" customer options. In the event the High Court denies CPI's petition for review, it is USTA's understanding from FCC Staff that the Agency expects to take expeditious action to implement a rulemaking, to the extent it resolves at that juncture, that such action is appropriate and lawful given the disposition in light of judicial directives and/or other relevant considerations.

While USTA's intent and actions concerning this meeting were to determine the disposition of the FCC's CPNI rules and regulations and status inquiries do not invoke the Commission's Ex Parte rule requirements, this letter is nonetheless being filed pursuant to Commission Rule 1.1206(2) in the event that the ex parte rule does in fact apply to the meeting. Therefore, an original and one copy of this letter has been forwarded to you for inclusion in the public record. Please contact me if you have any questions about this matter.

Respectfully,



Julie E. Rones  
Senior Counsel

cc: Margaret Egler, Esq.  
Eric Einhorn, Esq.