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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Rules and Policies Regarding	)	CC Docket No. 91-281
Calling Number Identification Service	)	
Caller ID	)	
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	)	
	)	

To: The Commission

PETITION FOR DECLARATORY RULING

Macro International Inc. (Macro), through counsel and pursuant to Section 1.2 of the Commission's Rules, 47 C.F.R. §1.2, hereby respectfully files its request for Declaratory Ruling in the above-captioned proceeding.

Macro is an opinion research company that delivers high quality, research based solutions to complex problems, integrating objective information with the advisory and implementation tasks needed to improve real world performance. One of the methods Macro utilizes to obtain information for its clients is by conducting telephone surveys. The telephone surveys are conducted via telephone live operators after the numbers to be called are generated randomly by a computer, which actually initiates the call. In addition to Macro, this method is practiced by a number of other information collection entities, including political pollsters and non-profit associations. Unfortunately, due to uncertainty regarding the application of one of the Commission's rules,

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namely 47 C.F.R. 64.1601(d)(2), the use of telephone surveys by Macro and other information collection entities in a small number of jurisdictions is threatened.

Macro is requesting that the Commission issue a declaratory ruling that permits interexchange carriers ("IXCs") that lack the necessary technical capabilities to provide blocking and unblocking capabilities the same protections of the 64.1601 exemption that are afforded to similarly situated local exchange carriers ("LECs").[1] The declaratory ruling would provide the necessary safeguards for originating calling parties, such as Macro, in cases where a State statute exists that creates a punishable offense for the use of any method of solicitation that blocks caller identification information from being transmitted to a residential telephone subscriber.

I. BACKGROUND

On March 25, 1997, the Commission released a Third Report and Order ("3rd R&O") in the above-captioned proceeding that, in part, established new Caller ID rules governing local exchange carriers ("LECs") without blocking and unblocking capabilities, and private branch exchange ("PBX") and related systems.[2] In the 3rd R&O, the Commission emphasized its intention to protect the reasonable privacy expectations of the end user and as such, the Commission held that LECs without blocking or unblocking capabilities in their switches were prohibited from passing the calling party number ("CPN").[3] The Commission also concluded that it would not burden LECs not

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[1] The LEC exemption specifically provides "A local exchange carrier with Signaling System 7 capability does not have the software to provide *67 and *82 functionalities. Such carriers are prohibited from passing CPN." 47 C.F.R. 64.1601(d)(2) (1997).

[2] Rules and Policies Regarding Calling Number Identification Service–Caller ID, *Third Report and Order*, 12 FCC Rcd 3867 (March 25,1997).

[3] *Id.* at para. 15.

equipped with CLASS TM software, or alternative blocking or unblocking capabilities, by requiring them to purchase such capabilities.[4] The rationale for the Commission's determination was based on commenters' assertions that the deployment of CLASS TM software would be "economically infeasible."[5] In addition, the Commission agreed with commenters' arguments that the minimal amount of access lines serves as a evidence that this action would not frustrate the Commission's goal of maximizing CPN passage.[6]

The 3rd R&O also helped create an air of uncertainty with respect to the application of 64.1601(d)(2). While the Commission's 3rd R&O specifically held that *LECs were not required* to obtain CLASS TM software or alternative blocking and unblocking capabilities,[7] the Commission's December 1995 Order and Fourth Notice of Proposed Rulemaking ("December Order") asserted that the Commission "did adopt rules requiring *carriers* that already deployed SS7 call set capability to *make the relatively minor investments* needed for customer notification programs and for switches to recognize *82 as a request to unblock a line."[8] The uncertainty created by the use of the term "carriers" in the December Order, which comprises both LECs and IXCs, and the use of the term

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[4] *Id.*

[5] *Id.* at para. 17. *See* Lee Alliance Fourth NPRM comments at 3.

[6]The LEC Association stated that fewer than one half of one percent of the nation's total access lines were served by SS7-ready switches that lack CLASS TM software. *Id.*

[7] 3rd R&O *supra* note 2 at para.15 (emphasis added).

[8] Rules and Policies Regarding Calling Number Identification Service – Caller ID, *Order and Fourth Notice of Proposed Rulemaking*, 10 FCC Rcd 13796 at para. 50 (December 1, 1995) (emphasis added).

"LECs" in the 3rd R&O, makes it unclear whether the Commission wishes to extend the exemption to IXCs.[9]

II. REQUEST FOR DECLARATORY RULING

The uncertainty created by the Commission's Orders has left Macro and other information collection entities open to potential liability and powerless to remedy the situation. There are currently State statutes that prohibit any person from using any method of solicitation which prevents the caller identification information from being transmitted to the telephone subscriber.[10] The existence of State statutes of this description coupled with the fact that a number of IXCs lack the technical capability to block and unblock CPN has the potential of severely affecting the business practices of Macro and other information collection entities.[11]

A recent informational telephone survey conducted in New Hampshire is an example of how Macro's business practices have already been adversely affected. New Hampshire law provides that no person using an automated dialing system or any other method of solicitation (which is defined broadly as including parties seeking to "obtain information, data or opinions"[12]) from the use of any

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[9] Carriers are defined by statute as "any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier." 47 U.S.C. 153 (10) (1934).

[10] New Hampshire is one jurisdiction that prohibits this type of activity. N.H. Rev. Stat. Ann. § 359E (1990), *Use of Automatic Telephone Dialing Systems and Caller Identification Services.*

[11] Several IXCs requested temporary waivers of the CPN requirement in the *Order and Fourth Notice of Proposed Rulemaking.* General Communication, Inc. (GCI), CompTel, Sprint and Cable and Wireless asserted that they lacked the necessary technical capability to deliver CPN without the risk of involuntarily passing ANI information.

[12] N.H. Rev. Stat. Ann.§ 359-E:1 (1990).

method that prevents caller identification information from being transmitted to the residential telephone subscriber.[13] In one particular instance, Macro was conducting a telephone survey for a health and welfare entity in New Hampshire and the telephone call was transmitted through an IXC that lacked the capability to provide the CPN to the residential subscriber. The telephone subscriber brought a legal action against Macro for violating the New Hampshire statute. Since it was unclear whether the 64.1601(d)(2) exemption could be applied to the IXC in the instant case, the one telephone call resulted in a protracted legal dispute and has clouded the future of telephone surveys in New Hampshire.

As discussed earlier, exempting the *de minimis* number of IXCs that are without the requisite CLASS TM software or alternative blocking and unblocking software from the requirement to pass along CPN information will in no way frustrate the Commission's goal of maximizing CPN passage. Rather, it would be consistent with the 3rd R&O which provided the same exemption to the *de minimis* number of similarly situated LECs

Pursuant to Section 1.2 of the Commission's rules, the Commission may issue a declaratory ruling at any time to terminate a controversy or remove uncertainty.[14] The Commission has wide discretion within this framework to determine whether a declaratory ruling is necessary.[15] Commission action pertaining to the 64.1601(d)(2) has created a substantial level of uncertainty

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[13] N.H. Rev. Stat. Ann.§ 359-E:5 (1999). A violation of this provision can result in civil penalties up to $10,000 for each violation.

[14] 47 C.F.R. Sec. 1.2. The Administrative Procedure Act also provides that a federal administrative agency such as the Commission, "in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty."5 U.S.C. 554(e).

[15] *See* Yale Broadcasting Co. v. FCC, 478 F.2d 594, 602 (D.C. Cir. 1973).

regarding whether IXCs should be covered under the exemption. Therefore, Macro requests that the Commission issue a declaratory ruling that permits interexchange carriers ("IXCs") that lack the necessary technical capabilities to provide blocking and unblocking capabilities the same protections of the 64.1601 exemption that are afforded to similarly situated local exchange carriers ("LECs").

III. CONCLUSION

WHEREFORE, it is respectfully requested that the Commission ISSUE a Declaratory Ruling in the above-captioned matter.

Respectfully submitted,

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