

**Before the
Federal Communications Commission
Washington, DC 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)	CC Docket No. 96-149
Safeguards of Sections 271 and 272 of the)	
Communications Act of 1934, as amended)	
)	

**COMMENTS
OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION**

The National Telephone Cooperative Association (NTCA) submits these comments in response to the Federal Communications Commission's (FCC or Commission) Second Further Notice of Proposed Rulemaking in the above referenced proceeding.¹ NTCA is a national trade organization representing more than 500 small and rural telephone companies.²

¹ *Implementation of the 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 of the Communications Act of 1934, as amended*, CC Docket Nos. 96-115, 96-149, FCC 01-247 (rel. September 7, 2001).

² All of NTCA's members are "rural telephone companies" as that term is defined in the Telecommunications Act of 1996 (Act). 47 U.S.C. § 153(37).

A subscriber who does not care if their CPNI is used may not take the time to complete and send in a permission card to say they don't care. It is not something people would necessarily feel strongly enough about to spend their time and energy filling out one more mail-in form. Therefore, a company that wishes to use CPNI under an "opt-in" approach would be forced to contact each subscriber individually to get permission. Small carriers simply lack the resources to make it worth their while to perform such a task. Their marketing efforts would be significantly hindered despite a lack of any evidence that subscribers actually oppose the use of CPNI. In the long run, consumers will be the losers if the rule is not changed.

An "opt-out" approach with proper notice allows those subscribers who oppose the use of their CPNI to take an active role to prevent it from being used. Carriers should be required to notify the subscribers of their CPNI rights and after a sufficient period, such as 30 days, use the CPNI of any customer that does not oppose the use. Subscribers may be properly protected if carriers are required to stop the use of CPNI any time the subscriber makes a request.

The choice of an "opt-in" or "opt-out" approach sufficiently protects the customer as required under the Act and avoids overly burdening the carrier.

III. AN "OPT-OUT" APPROACH DOES NOT PROVIDE RURAL CARRIERS WITH AN UNFAIR COMPETITIVE ADVANTAGE

NTCA's members provide their subscribers with a wide variety of services. In addition to local exchange service, many members provide long-distance, Internet, wireless, and cable television service. Many also offer enhanced services. NTCA's members' services are diverse because very often the rural carriers are the only

telecommunications service providers in their areas. The rural territories served by NTCA's members are rarely subject to meaningful competition. The areas are not profitable enough for the large carriers to serve. However, because NTCA's members are situated in the communities they serve, they are dedicated to providing service that ensures the communities' economic growth and survival.

The rural carrier does not gain an unfair competitive advantage by promoting new services or equipment to its subscribers. Marketing allows consumers to benefit from the multiple services that would not be available to them but for the efforts of the rural providers. The competitive concerns that gave rise to the "opt-in" only approach does not apply to rural territory. Rural carriers should be given the flexibility that an "opt-out" approach would provide.

Further, the Commission is under a statutory obligation to promote the delivery of advanced telecommunications capability to rural areas on a reasonable and timely basis.⁴ An "opt-in" only approach for rural carriers may limit the information consumers receive about advanced telecommunications. It runs afoul of the statutory mandate.

IV. CONCLUSION

The "opt-in" only approach imposes an unnecessary burden on rural carriers. Providing carriers with the flexibility to choose either an "opt-in" or "opt-out" approach for obtaining permission to use CPNI, combined with current notice requirements about subscribers' rights to limit CPNI use, will satisfy the Tenth Circuit's remand and sufficiently address the Commission's competitive concerns. For the above stated

⁴ See 47 U.S.C. § 254; 47 U.S.C. § 309(j); 47 U.S.C. § 706.

reasons, the Commission should permit carriers to obtain CPNI permission using an “opt-in” or “opt-out” approach at their discretion.

Respectfully Submitted,

NATIONAL TELEPHONE COOPERATIVE
ASSOCIATION

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November 1, 2001

CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CC Docket Nos. 96-115 and 96-149, FCC 01-247 was served on this 1st day of November 2001 by first-class, U.S. Mail, postage prepaid, to the following persons

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National Telephone Cooperative Association
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