May 7, 2002

By Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth Street, SW
Washington, DC 20554

Re: **Ex Parte**: CC Docket Nos. 96-115 and 96-149

Dear Ms. Dortch:

WorldCom hereby responses to the *ex parte*, regarding the Commission's rules on customer proprietary network information (CPNI), filed by Verizon on March 6, 2002.

In its letter, Verizon claims that "[t]here is no legal or policy basis to permit any unaffiliated third party to gain access to a customer's services records upon unverifiable oral consent 'for the purpose of placing a service order' or for any reason. The Act requires prior written customer consent before a carrier may release CPNI to an unaffiliated third party." Contrary to the statements of Verizon, although the Act requires disclosure upon a customer's written consent, it does not require written consent for disclosure. In particular, section 222(c)(2) of the Act does not *restrict* access in any manner. Rather, the provision prohibits a carrier from denying access when a customer has consented in writing to such access or disclosure.[1] Restrictions on use, disclosure and access are addressed in section 222(c)(1) of the Act. As the Commission has stated, section 222(c)(1) does not specify what kind of approval is required when it permits a carrier upon "approval of a customer" to use, disclose, or permit access to CPNI for purposes beyond what the Commission has defined as the Total Service Approach.[2] The Commission CPNI rules allow for written, oral or electronic approvals.[3]

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[1] "A telecommunications carrier *shall disclose* customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customers." 47 U.S.C. 222(c)(2)(*emphasis added*).
[2] *In the Matter of 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*, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket Nos. 96-115 and 96-149, para. 86 (1998)("CPNI Order").
[3] 47 CFR § 64.2007(b).

Although generally a carrier may have some discretion as to whether it releases CPNI to a third party on the basis of oral consent, the circumstances concerning the provision of access to the information to telecommunications carriers in general,[4] and competing local exchange providers (CLECs) in particular, are distinguishable. The LEC is not only bound by the mandate of 222(c)(2), which requires disclosure upon written consent, incumbent LECs are also bound by sections 251(c)(3) and 251(c)(4) of the Act with regard to their interactions with CLECs. Accordingly, the Commission has repeatedly stated that "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)."[5] In the *UNE Remand Order*, the Commission further recognized that a competing LEC's ability to provide service without access to customer service records (CSRs) would be materially diminished.[6] Moreover, an ILEC's obligation to provide access is not limited to situations where the CLEC is placing an order for unbundled elements or resold service.[7] Since it is virtually impossible for a competing carrier to get the customers' written consent during a sales call, the Commission must continue to recognize the discriminatory and anticompetitive nature of Verizon's suggestion that written consent is required. ILECs cannot be allowed to deny access to a CSR, which contains vital information about the customer's current service offering, to a competing provider that has obtained the customer's oral approval to access this information. Allowing what Verizon suggests would essentially bring a halt to development of local competition.

Verizon also states that in "regards to obtaining access to a customer's service record when placing an order, because a CLEC must have already obtained verifiable customer consent before it can switch the customer under the Commission's anti-slamming rules [], there is no need for additional customer authorization to access a customer's service records to complete the service order." Since consent to access the customer's CSR is not required under the slamming rules, Verizon seems to imply that, once a carrier has obtained customer authorization to switch the customer's service provider, that carrier (new provider) does not need customer approval to access the CSR. WorldCom previously argued that the CSR information a carrier needs to initiate service falls under sections 222(c)(1)(A) and 222(d)(1), and therefore that carrier should not be require to obtain consent from the customer to access this information. Unfortunately the Commission disagreed, and requires a carrier to obtain the customer's oral consent to access the

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[4] *See* CPNI Order, para. 85 ["[A] carrier's failure to disclose CPNI to a competing carrier that seeks to initiate service to a customer that wishes to subscribe to the competing carrier's service, may well, depending on the circumstances, constitute an unreasonable practice in violation of section 201(b)."] *See also*, Order on Reconsideration and Petition for Forbearance, CC Docket Nos. 96-115 and 96-149, para. 85 (1999)("Order on Reconsideration").

[5] CPNI Order, para. 84; Order on Reconsideration, para. 85.

[6] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, paras. 434-5 (1999)("UNE Remand Order"). ["[I]ncumbent LECs have access to exclusive information . . . needed to provide service [such as] customer service record information ….[T]he incumbent LEC has access to unique information about the customer's service, and a competitor's ability to provide service is materially diminished without access to that information . . . competitor[s] run[] the risk of offering a lower quality of service from the perspective of the end-user if it does not know all the details of the customer's current service offering."]

[7] *Id,* para. 435.

CSR even after that carrier has "won" the customer for the relevant service.[8] WorldCom would welcome the Commission's reconsideration of this decision.

Moreover, as Verizon notes, the customer's consent to switch providers is verifiable. But it is important to note that authorization for the switch is obtained, and access to certain customer information is necessary, prior to the commencement of the verification process. Under the Commission rules the new provider may not remain on the line during the third party verification (TPV) process,[9] and customers are not going to appreciate multiple phone calls from the carrier in order to initiate service. Thus, although the carrier change order is not submitted until the verification is completed, the order must be ready to be sent, with all requisite customer information, while the carrier and customer are in contact, prior to the customer being sent to TPV.

Finally, verbal consent is not limited to inbound telemarketing.[10] Moreover, WorldCom did not suggest in its *ex parte* notice dated February 20, 2002 that an outbound telemarketing call by a CLEC be treated as an inbound telemarketing call. In its *ex parte* WorldCom points out that some of the notifications the Commission rules currently require may not be applicable to certain situations. Notification that is irrelevant to the circumstances will only serve to confuse consumers. As such, the Commission rules should be flexible in requiring that carriers provide only the notification that is applicable to the approval being obtained.

If you have any questions regarding this *ex parte*, please contact me at the number below.

Sincerely,

/s/
Karen T. Reidy
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(202) 736-6489

cc: William Dever
Mary Greene

[8] Order on Reconsideration, paras. 86-88.
[9] 47 CFR § 64.1120(c)(3)(ii).
[10] 47 CFR § 64.2007(b).