

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
Implementation of the)	
Telecommunication Act of 1996)	CC Docket No. 96-115
)	
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 No. 96-149
)	
)	
)	

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. (SBC), on behalf of itself and its subsidiaries, hereby files these limited reply comments in response to comments filed in the above captioned docket.¹

A number of parties filed comments proposing to impose various, burdensome restrictions on carrier uses of CPNI. In particular, the Electronic Privacy Information Center (EPIC) argues that the Commission should condition any carrier-to-carrier sale or transfer on the acquiring carrier providing affected customers 30-days notice of the CPNI transfer and obtaining opt-in consent. WorldCom argues that the Commission should restrict the ability of carriers to use the identity of a prospective customer's current provider, even if the carrier learns of such identity via means independent of the current provider's records. AT&T argues that the Commission should define the information that constitutes carrier proprietary information and

¹ *Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Notice of Proposed Rulemaking, CC Docket No. 96-115 (rel. Sept. 7, 2001) (NPRM).

preclude carriers from using such information for marketing. AOL argues that where it orders telecommunications services on behalf of an end user, it should be able to restrict the use of any CPNI provided to the carrier via the Commission's opt-out mechanism. SBC responds to these arguments in turn below.

EPIC argues that the opt-in approach should be required when acquiring carriers seek to use CPNI and further that the acquiring carrier should be required to give the affected customers at least 30-days notice prior to the CPNI transfer.² As the record overwhelmingly shows, acquiring carriers already provide customers 30-days notice prior to the transfer of their service to another carrier. Customers understand that transfer of their service to another carrier includes the transfer of their CPNI, which is essential to the continued provision of their services. Additional CPNI notification, accordingly, is superfluous.

Further, an opt-in consent requirement would be contrary to the public interest. As the Commission is aware, when a carrier goes out of business, it often needs to transition its customer base to another carrier in a short timeframe. SBC, in fact, has been involved in carrier-to-carrier transfers where the exiting carrier departed the market on less than 30-days notice. It would be impractical and extremely burdensome for an acquiring carrier to obtain opt-in consent from every affected customer, particularly when thousands of customers are involved. The notice that acquiring carriers provide to customers pursuant to the Commission's authorization and verification rules is sufficient to provide customers the notice EPIC seeks and is sufficient to give the acquiring carrier the requisite consent to use the acquired customers' CPNI to provision service.

² EPIC Comments at 6. Similarly AOL argues that carriers should give customers sufficient time to decide if they want the new carrier to access their CPNI.

EPIC also argues that acquiring carriers should obtain opt-in consent prior to using CPNI for any marketing purpose.³ The Commission has already considered and rejected arguments for an opt-in consent requirement, concluding that an opt-in consent requirement would run afoul of carriers' First Amendment rights. This reasoning is applicable to all carriers alike. Acquiring carriers are in the same position as other carriers and accordingly should be permitted to access and use CPNI of their acquired customers to market services within the existing service relationship, consistent with the total service approach.⁴

WorldCom asks the Commission to restrict carriers from using the identity of a prospective customer's provider in its marketing, even if the carrier learns of the other carrier's identity via independent means.⁵ According to WorldCom, carrier identity information can be used by another carrier only if the relevant carrier's consent has been obtained. The FCC should reject this argument. A carrier that learns the identity of a customer's current provider from the customer or via other independent means should be able to use this information in its marketing to that customer. Nothing in Section 222(b) precludes such use. In fact, Section 222(b) specifically states that carriers cannot use proprietary information received or obtained from *another carrier*.⁶ Thus, Section 222(b) on its face is inapplicable to information obtained from other sources, including directly from customers.

AT&T asks the Commission to define what constitutes carrier information. Specifically, AT&T asks the Commission find that "PIC information, interconnected call information, access

³ EPIC Comments at 2-5.

⁴ See AT&T Comments at 3-7; AT&T Wireless Comments at 5-7; BellSouth Comments at 2-3; CTIA Comments at 8-12; Nextel Comments at 8; Sprint Comments at 5-6; USTA Comments at; Verizon Comments at 5; WorldCom Comments at 5-6.

⁵ WorldCom Comments at 6-7.

information, end user information relating to customers of other carriers using ILEC access services and outPIC information.”⁷ SBC opposes a finding that use of PIC information or any other information is governed by Section 222(b) in all instances. With respect to the other categories of information, SBC is unclear as to what information is represented by these categories and consequently asks the Commission to reject this request. Nevertheless, the Commission should make clear that where a carrier obtains carrier-related information from independent sources, i.e. not from the carrier, such information could be used for marketing purposes.

AOL argues that where an ISP orders telecommunications services on behalf of an end user, the ISP may restrict use of any CPNI provided to the carrier via the Commission’s opt-out method. Where an ISP places an order for service on behalf of an end user, however, the ISP has provided the carrier with ISP proprietary information, which is not governed by Sections 222(b) or 222(c). Section 222(b) is applicable only to proprietary information received from telecommunications carriers, not information service providers. Similarly, Section 222(c) is applicable to CPNI, not ISP information where the ISP is not the customer. Notwithstanding, carriers are obligated under Section 222(c) to obtain consent prior to using any CPNI of the end-user. To the extent AOL is concerned with protecting its proprietary information, it can enter into agreements with carriers to protect its proprietary information, which AOL has done with SBC.

For the foregoing reasons, the Commission should reject the foregoing proposals as set forth herein.

⁶ 47 C.F.R. § 222(b).

⁷ AT&T Comments, n.2.

Respectfully Submitted,

/s/Davida Grant

Davida Grant
Gary L. Phillips
Paul K. Mancini

SBC Communications Inc.
1401 I Street NW 4thFloor
Washington, D.C. 20005
Phone: 202-326-8903
Fax: 202-408-8763

Its Attorneys

November 19, 2002

Certificate of Service

I, Loretia Hill, do hereby certify that on this 19th day of November, a copy of the foregoing “Reply” was served U.S. Mail to the parties listed on the attached sheets.

/s/ Loretia Hill _____
Loretia Hill

**Daniel Meron
Jonathan F. Cohn
Attorneys for AT&T
Sidley Austin Brown & Wood
1501 K Street NW
Washington, DC 20005**

**Mark C. Rosenblum
Lawrence J. Lafaro
Judy Sello
AT&T Corp
Room 3A229
900 Route 202/206/ North
Bedminster, NJ**

**Howard Symons
Sara F. Leberman
Susan S. Ferrel
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo
701 Pennsylvania Ave NW
Suite 900
Washington, DC 20004**

**Douglas Brandon
Vice President-External Affairs
David P. Wye
Director, Spectrum Policy
AT&T Wireless Services
Washington, DC 20036**

**Stephen Earnest
Richard Sbaratta
Bell South Telecommunications
Suite 4300
675 West Peachtree Street NE
Atlanta, Georgia 30375**

**Leonard J. Kennedy
Celeste M. Moy
Nextel Communications Inc
2001 Edmund Halley Drive
Reston, VA 20191**

**To-Quyen T. Truong
Christina H. Burrow
Attorney for Nextel Communications
Dow, Lohes & Albertson PLLC
1200 New Hampshire Avenue NW
Washington, DC 20036**

**Sharon J. Devine
Kathryn Marie Krause
Qwest Services Corporation
Suite 700
1020 19th Street NW
Washington, DC 20036**

**Michael Fingerhut
Richard Juhnke
Sprint Corporation
401 9th Street NW, Suite 400
Washington, DC 20004**

**Lawrence E. Sarjeant
Indra Sehdev Chalk
Michael T. McMEnamin
Robin E. Tuttle
United States Telecom Association
1401 H Street NW Suite 600
Washington, DC 20005**

**Ann H. Rakestraw
Verzion
1515 North Courthouse Road
Suite 500
Arlington, VA 22201**

**Karen Reidy
WorldCom
1133 19th Street NW
Washington, DC 20036**

**Mark J. O'Connor
Lampert O'Connor PC
Attorneys for America Online
1750 K Street NW Suite 600
Washington, DC 20006**

**Maureen A. Scott
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007**

**Michael Altschul
CTIA
1250 Connecticut Ave NW
Suite 800
Washington, DC 20036**

**Mikal Condon
Electronic Privacy Information Center
1718 Connecticut Avenue, NW, Suite 200
Washington, DC 20009**