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DIVISION OF EXTERNAL AFFAIRS
CHARLES H. HILL
DIRECTOR
(850) 413-6800

Public Service Commission

October 7, 2002

VIA ELECTRONIC FILING

Honorable Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW - Portals II, TW-A325
Washington, DC 20554

Re: CC Docket No. 96-115, Implementation of the Telecommunications Act of 1996;
CC Docket No. 96-149, Telecommunications Carriers' Use of Customer Proprietary
Network Information and Other Customer Information, Implementation of the Non-
Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934,
As Amended;
CC Docket No. 00-257, 2000 Biennial Regulatory Review – Review of Policies and
Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers

Dear Ms. Dortch:

Forwarded herewith are Comments of the Florida Public Service Commission in the above dockets with regard to Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information.

Should you have additional questions, please contact Greg Fogleman, the primary staff person in this docket, at (850) 413-6574.

Sincerely,

/ s /

Cynthia B. Miller, Esquire
Office of Federal and Legislative Liaison

CBM:tf

cc: Chairman Michael Powell
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Brad Ramsay, NARUC

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Telecommunications 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 Section 271 and 272 of the Communications Act of 1934, As Amended)	CC Docket No. 96-149
)	
2000 Biennial Regulatory Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers)	CC Docket No. 00-257

**COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION
REGARDING TELECOMMUNICATIONS CARRIERS' USE OF
CUSTOMER PROPRIETARY NETWORK INFORMATION
AND OTHER CUSTOMER INFORMATION**

The Florida Public Service Commission (FPSC) submits these comments in response to the Third Further Notice of Proposed Rulemaking (FCC 02-214) released on July 25, 2002. In this Notice, the Federal Communications Commission (FCC) sought comments on carrier use and disclosure of Consumer Proprietary Network Information (CPNI) when selling assets or going out of business. Specifically, the FCC questioned whether carriers can sell CPNI as an asset. Section 222 of the Telecommunications Act of 1996 (the Act) specifically addresses privacy of customer information. In general, it requires that every telecommunications carrier protect the confidentiality of proprietary information of other telecommunications carriers, equipment manufacturers, and customers.

The FPSC believes that Section 222 of the Act provides guidance relating to the issues addressed in the FCC's Further NPRM. Specifically, Section 222(c)(1) requires that

telecommunications carriers only use, disclose, or permit access to, individually identifiable CPNI in either its provision of telecommunications services or those services necessary to provide telecommunications services.¹ It provides exemptions only as authorized by law or with the approval of the customer. In Section 222(c)(3), the Act allows local exchange carriers to use, disclose, or permit access to, “aggregate customer information” for other purposes if it is made available to other carriers or persons on reasonable and nondiscriminatory terms.² Thus, it appears that Congress consciously conditioned the availability of sensitive customer information and on how telecommunications carriers use the information.

The FPSC agrees with the comments of FCC Chairman Powell when he noted that “states continue to be uniquely positioned to assess the proper scope of CPNI use and may adopt more stringent notification requirements” The Florida Legislature has already taken steps to address this issue in the context of Florida Statute 364.24(2). Specifically, F.S. 364.24(2) states:

Any officer or person in the employ of any telecommunications company shall not intentionally disclose customer account records except as authorized by the customer or as necessary for billing purposes, or required by subpoena, court order, other process of court, or as otherwise allowed by law. Any person who violates any provision of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Nothing herein precludes disclosure of customers' names, addresses, or telephone numbers to the extent they are otherwise publicly available. Nothing herein precludes a telecommunications company from making available to its customers a customer's own customer account record through telephonic means.

The FPSC commends the FCC for expressly acknowledging the separate state statutory authority over customer information and declining to preempt more restrictive state requirements.

¹ Such as the publishing of directories.

² The term “aggregate customer information” means collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed.

The FCC requested comment on whether a carrier exiting the market should be able to use CPNI for transition of its customers to another carrier. The FPSC believes that such carriers should be able to disclose CPNI to an acquiring carrier, if the exiting carrier states that fact in advance to customers acquired by the sale or transfer. To the degree that the exiting carrier has obtained CPNI approvals from its customers, the acquiring carrier should be deemed to have also received such approvals. We believe that this interpretation is consistent with Section 222(c)(1). The FCC also requested comment on whether carriers can sell CPNI as an asset. The FPSC believes that the sale of CPNI may be allowed under the Act only if the recipient of the data is a telecommunications provider.³

In conclusion, the FPSC commends the FCC for declining to preempt more restrictive state requirements. We request that the FCC rules prohibit unfettered distribution of sensitive customer information for a price.

Respectfully submitted,

/ s /

Cynthia B. Miller, Esquire
Bureau of Intergovernmental Liaison
(850) 413-6082

FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0872

Dated: October 7, 2002

³ We note that Section 222(c)(3) permits a local exchange carrier to use, disclose, or permit access to aggregate customer information for other than telecommunications purposes if it does so on a non-discriminatory basis. This aggregate customer information is, however, specifically defined as data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed, and are thus a subset of the full data provided within the CPNI.

