462.6250, 462.6500, 462.6750, 462.7000 and 462.7250.

(b) For a mobile station, control station, or fixed station operated in the duplex mode, the following 467 MHz channels may be used only to transmit communications through a repeater station and for remotely controlling a repeater station. The licensee of the GMRS system must select the transmitting channels or channel pairs (*see* § 95.7(a) of this part) for the stations operated in the duplex mode, from the following 467 MHz channels: 467.5500, 467.5750, 467.6000, 467.6250, 467.6500, 467.6750, 467.7000 and 467.7250.

* * * * *

(e) [Reserved]

* * * * *

32. Section 95.101 is amended to add paragraph (d) to read as follows:

§ 95.101 What the license authorizes.

* * * * *

(d) For non-individual licensees, the license together with the system specifications for that license as maintained by the Commission represent the non-individual licensees' maximum authorized system.

33. Section 95.103 is amended by revising paragraphs (a) and (b) to read as follows:

§ 95.103 Licensee duties.

(a) The licensee is responsible for the proper operation of the GMRS system at all times. The licensee is also responsible for the appointment of a station operator.

(b) The licensee may limit the use of repeater to only certain user stations.

* * * * *

PART 97—AMATEUR RADIO SERVICE

34. The authority citation for Part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended: 47 U.S.C. 151–155, 301–609, unless otherwise noted.

35. Section 97.15 is revised to read as follows:

§ 97.15 Station antenna structures.

(a) Owners of certain antenna structures more than 60.96 meters (200 feet) above ground level at the site or located near or at a public use airport must notify the Federal Aviation Administration and register with the Commission as required by part 17 of this chapter.

(b) Except as otherwise provided herein, a station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur service communications. (State and local regulation of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the state or local authority's legitimate purpose. *See* PRB–1, 101 FCC 2d 952 (1985) for details.)

36. Section 97.17 is amended by revising paragraphs (b)(1) and (c) to read as follows.

§ 97.17 Application for new license grant.

* * * * *

(b) * * *

(1) Each candidate for an amateur radio operator license which requires the applicant to pass one or more examination elements must present the administering VEs with all information required by the rules prior to the examination. The VEs may collect all necessary information in any manner of their choosing, including creating their own forms.

* * * * *

(c) No person shall obtain or attempt to obtain, or assist another person to obtain or attempt to obtain, an amateur service license grant by fraudulent means.

* * * * *

37. Section 97.21 is amended by revising paragraph (a)(2) to read as follows:

§ 97.21 Application for a modified or renewed license.

(a) * * *

(2) May apply to the FCC for a modification of the operator/primary station license grant to show a higher operator class. Applicants must present the administering VEs with all information required by the rules prior to the examination. The VEs may collect all necessary information in any manner of their choosing, including creating their own forms.

* * * * *

PART 101—FIXED MICROWAVE SERVICES

38. The authority citation for Part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

39. Section 101.705 is revised to read as follows:

§ 101.705 Special showing for renewal of common carrier station facilities using frequency diversity.

Any application for renewal of license, for a term commencing January 1, 1975, or after, involving facilities utilizing frequency diversity must contain a statement showing compliance with § 101.103(c) or the exceptions recognized in paragraph 141 of the *First Report and Order* in Docket No. 18920 (29 FCC 2d 870). (This document is available at: Federal Communications Commission, Library (Room TW–B505), 445 Twelfth Street, SW, Washington, DC) If not in compliance, a complete statement with the reasons therefore must be submitted.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–115; FCC 99–223]

Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reconsiders the first CPNI order, addresses petitions for forbearance from the requirements of that order, and establishes rules to implement section 222. The intended effect is to further Congress' goals of fostering competition in telecommunications markets and ensure the privacy of customer information.

DATES: All of these rules contain information collection requirements that have not yet been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these rules.

FOR FURTHER INFORMATION CONTACT: Eric Einhorn, Attorney Adviser, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580 or via the Internet at eeinhorn@fcc.gov. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: 202–418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted August 16, 1999, and released September 3, 1999. The full text of this Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S. W., Room CY–A257, Washington, D.C. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc99223.wp, or may be

purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., N. W., Washington, D.C. 20036.

Regulatory Flexibility Certification:

As required by the Regulatory Flexibility Act, the Order contains a Final Regulatory Flexibility. A brief description of the analysis follows. Pursuant to section 604 of the Regulatory Flexibility Act, the Commission performed a comprehensive analysis of the Order with regard to small entities. This analysis includes: (1) A succinct statement of the need for, and objectives of, the Commission's decisions in the Order; (2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the Commission's assessment of these issues, and a statement of any changes made in the Order as a result of the comments; (3) a description of and an estimate of the number of small entities to which the Order will apply; (4) a description of the projected reporting, recordkeeping and other compliance requirements of the Order, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for compliance with the requirement; (5) a description of the steps the Commission has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the Order and why each one of the other significant alternatives to each of the Commission's decisions which affect small entities was rejected.

Synopsis of Order

I. Introduction

1. On February 26, 1998, the Commission released the *CPNI Order,* 63 FR 20326, April 24, 1998, adopting rules implementing the new statutory framework governing carrier use and disclosure of customer proprietary network information (CPNI) created by section 222 of the Communications Act (hereinafter ''the Act''). CPNI includes, among other things, to whom, where, and when a customer places a call, as well as the types of service offerings to which the customer subscribes and the extent the service is used.

2. This order on reconsideration is issued in response to a number of petitions for reconsideration, forbearance, and/or clarification of the *CPNI Order.* In this order we modify the *CPNI Order,* in part, to preserve the consumer protections mandated by Congress while more narrowly tailoring our rules, where necessary, to enable telecommunications carriers to comply with the law in a more flexible and less costly manner.

3. The Telecommunications Act of 1996 (1996 Act) became law on February 8, 1996. Although most of the provisions in the 1996 Act aim to implement Congress' intent that the 1996 Act ''provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition,'' section 222 addresses a different and additional goal. CPNI is extremely personal to customers as well as commercially valuable to carriers. As we stated in the *CPNI Order:* Congress recognized * * * that the new competitive market forces and technology ushered in by the 1996 Act had the potential to threaten consumer privacy interests. Congress, therefore, enacted section 222 to prevent consumer privacy protections from being inadvertently swept away along with the prior limits on competition.

4. As the Commission previously noted in the *CPNI Order,* section 222 is largely a consumer protection provision that establishes restrictions on carrier use and disclosure of personal customer information. The aim of section 222 stands in contrast to the other provisions of the 1996 Act that seek primarily to ''[open] all telecommunications markets to competition,'' and mandate competitive access to facilities and services. Section 222 reflects Congress' view that as competition increases, it brings with it the potential that consumer privacy interests will not be adequately protected by the marketplace. Thus, section 222 requires *all* carriers, whether or not a market is competitive, to protect CPNI and embodies the principle that customers must be able to control their personal information from unauthorized use, disclosure, and access by carriers. Where information is not specific to the customer, or where the customer so directs, section 222 permits the free flow or dissemination of information beyond the existing customer-carrier relationship.

5. In most circumstances, the constraints placed on carriers by section 222 only restrict the use or disclosure of CPNI *without* customer approval. When carriers are prevented from using a customer's CPNI by section 222, and the rules we promulgated in the *CPNI Order,* carriers need only obtain the customer's approval to use that customer's CPNI. Once a carrier has acquired customer approval, carrier use or disclosure of CPNI, in most cases, is unrestricted. Thus, section 222 enables customers to relinquish the presumption of privacy as they see fit.

6. Congress' determination in section 222 to balance competitive interests with consumers' interests in privacy and control over CPNI governed the Commission's reasoning and conclusions in the *CPNI Order.* This order is no different: we seek to carry out vigilantly Congress' consumer protection and privacy aims, while simultaneously reducing the burden of carrier compliance with section 222 by eliminating unnecessary expense and administrative oversight where customer privacy and control will not be sacrificed.

II. Overview

7. By this order, we respond to the requests for reconsideration, clarification and forbearance as follows:

(a) We deny the petitions for reconsideration which ask us to amend the CPNI rules to differentiate among telecommunications carriers.

(b) We decline to modify or forbear from the total service approach adopted in the *CPNI Order* because the total service approach keeps control over the use of CPNI with the customer and best protects privacy while furthering fair competition. We also clarify a number of aspects of the total service approach in response to petitioners' requests.

(c) We grant, in part, the petitions for reconsideration which request that we allow all carriers to use CPNI to market customer premises equipment (CPE) and information services under section 222(c)(1) without customer approval. We conclude that all carriers may use CPNI, without customer approval, to market CPE. We further conclude that CMRS carriers may use CPNI, without customer approval, to market all information services, while wireline carriers may do so for certain information services. We deny the petitions for forbearance on these issues.

(d) We eliminate the restrictions on a carrier's ability to use CPNI to regain customers who have switched to another carrier, contained in Section 64.2005(b)(3) of our rules. We find that ''winback'' campaigns are consistent with Section 222(c)(1). The Order concludes, however, that if a carrier uses information regarding a customer's decision to switch carriers derived from its wholesale operations to retain the

customer, such conduct violates the prohibitions in section 222(b) against use of proprietary information gained from another carrier in marketing efforts.

(e) We address various aspects of a customer's approval to use CPNI consistent with section 222. We also grandfather a limited set of pre-existing notifications to use CPNI and adopt the conclusions reached in the Common Carrier Bureau's *Clarification Order*, 63 FR 33890, June 22, 1998. We also eliminate, in an effort to reduce confusion and regulatory micro-management, § 64.2007(f)(4) of our rules, which requires a carrier's solicitation for approval, if written, to be on the same document as the carrier's notification. Further, we affirm our decision to exercise our preemption authority on a case-by-case basis for state rules that conflict with our own.

(f) We lessen the regulatory burden of various CPNI safeguards while continuing to require that carriers protect customer privacy. We modify our flagging requirement so that carriers must clearly establish the status of a customer's CPNI approval prior to the use of CPNI, but leave the specific details of compliance with the carriers. In so doing, we allow the carriers the flexibility to adapt their record keeping systems in a manner most conducive to their individual size, capital resources, culture and technological capabilities. Similarly, we amend our rules to eliminate the electronic audit trail requirement and instead require carriers to maintain a record of their sales and marketing campaigns that use CPNI.

(g) We affirm our conclusion in the *CPNI Order* that the most reasonable interpretation of the interplay between sections 222 and 272 is that section 272 does not impose any additional obligations on the Bell operating companies (BOCs) when they share their CPNI with their section 272 affiliates. We also adopt the Common Carrier Bureau's conclusion in the *Clarification Order* that a customer's name, address and telephone number are ''information'' for the purposes of section 272(c)(1), and consequently, if a BOC makes such information available to its 272 affiliate, it must then make it available to non-affiliated entities.

(h) We find that the relationship of sections 222 and 254 does not confer any special status to carriers seeking to use CPNI to market enhanced services and CPE in rural exchanges to select customers. Moreover, the Order rejects the contention that the Commission should apply the requirements of sections 201(b), 202(a) and 272 to incumbent local exchange carriers (ILECs) to impose a duty on ILECs to electronically transmit a customer's CPNI to any other entity that obtains a customer's oral approval to do so.

III. Background

A. The CPNI Order

8. On May 17, 1996, the Commission initiated a rulemaking, in response to various formal requests for guidance from the telecommunications industry, regarding the obligation of carriers under section 222 and related issues. The Commission subsequently released the *CPNI Order* on February 26, 1998. The *CPNI Order* addressed the scope and meaning of section 222, and promulgated regulations to implement that section. It concluded, among other things, as follows: (a) Carriers are permitted to use CPNI, without customer approval, to market offerings that are related to, but limited by, the customers' existing service relationship; (b) before carriers may use CPNI to market outside the customer's existing service relationship, carriers must obtain express written, oral, or electronic customer approval; (c) prior to soliciting customer approval, carriers must provide a one-time notification to customers of their CPNI rights; (d) in light of the comprehensive regulatory scheme established in section 222, the *Computer III* CPNI framework is unnecessary; and (e) sections 272 and 274 impose no additional CPNI requirements on the Bell Operating Companies (BOCs) beyond those imposed by section 222.

B. The Clarification Order

9. On May 21, 1998, in response to a number of requests for clarification of the *CPNI Order*, the Common Carrier Bureau released a *Clarification Order*. This order addressed several issues. It concluded that independently-derived information regarding customer premises equipment (CPE) and information services is not CPNI and may be used to market CPE and information services to customers in conjunction with bundled offerings. In addition, it clarified that a customer's name, address, and telephone number are not CPNI. Moreover, it stated that a carrier has met the requirements for notice and approval under section 222 and the Commission's rules if it has both provided annual notification to, and obtained prior written authorization from, customers with more than 20 access lines in accordance with the Commission's former CPNI rules. Finally, it determined that carriers are not required to file their certifications of corporate compliance, which carriers are required to issue by the *CPNI Order*, with the Commission.

C. The Stay Order

10. In the *CPNI Order*, the Commission required, among other things, that carriers develop and implement software systems that ''flag'' customer service records in connection with CPNI and that carriers maintain an electronic audit mechanism (''audit trail'') that tracks access to customer accounts. The Commission chose to defer the enforcement of these rules until eight months after the effective date of the rules: January 26, 1999. On September 24, 1998, however, the Commission stayed, until six months after the release date of an order addressing these issues on reconsideration, the enforcement of actions against carriers for noncompliance with applicable requirements set forth in the Commission's rules.

IV. Consistent Treatment for All Carriers

A. Incumbents vs. CLECs

11. Section 222(c)(1) restricts the ability of telecommunications carriers to use CPNI without customer approval. In the *CPNI Order*, we concluded that ''Congress did not intend to, and we should not at this time, distinguish among carriers for the purpose of applying Section 222(c)(1).'' We found, based upon the language of the statute itself, that section 222 applies to all carriers equally and, with few exceptions, does not distinguish among classes of carriers. Various parties on reconsideration, however, seek reversal of this conclusion. One group of petitioners advocates that we impose stricter CPNI restrictions on incumbent carriers than competitors, based upon the greater potential for anticompetitive use or disclosure of CPNI by ILECs. We previously rejected this very argument in the *CPNI Order*. These parties have not raised any arguments or facts that persuade us to reverse our conclusion that section 222 is intended to apply to all segments of the telecommunications marketplace regardless of the level of competition present in any segment. Accordingly, we affirm that section 222 does not distinguish between classes of carriers and applies to all carriers equally.

B. Wireline vs. Wireless

12. Congress enacted section 222 at a time when the wireless industry had been subject to less regulatory requirements than wireline carriers. Congress was fully aware that CMRS

providers, and CLECs for that matter, were to evolve in more competitive environments. Notwithstanding, there is nothing in the statute or its legislative history to indicate that Congress intended that the CPNI requirements in section 222 should not apply to wireless carriers. Given the opportunity to exclude competitive carriers from the scope of section 222, we must give meaning to the fact that Congress did not exempt them. Moreover, the underlying policy objective of section 222 is to protect *consumers,* while balancing competitive interests. We believe that the privacy interests of CMRS customers are no less deserving of protection than those of wireline customers, although the differences in customer expectations may warrant different approaches. We note too that this reconsideration lightens the impact of compliance with the CPNI rules on all carriers by providing flexibility for technological differences in administrative systems with regard to the electronic safeguards rules, which should be beneficial to all companies, including independent CMRS providers. Finally, we note that a few parties urge the Commission to forbear from enforcing CPNI obligations on CMRS providers generally. We address these arguments in Part V.B.3.d. Therefore, we deny those petitions for reconsideration that seek different treatment for CMRS carriers.

C. Small and Rural Carriers

13. As we noted in the *CPNI Order,* the Commission's CPNI rules apply to small carriers just as they apply to other sized carriers ''because we are unpersuaded that customers of small businesses have less meaningful privacy interests in their CPNI.'' Petitioners have not raised any new arguments or facts that persuade us to reverse this conclusion with respect to these carriers. Thus, we will not distinguish among carriers based upon the number or density of lines they serve either.

V. Carrier's Right to Use CPNI Without Customer Approval

A. The Total Service Approach

1. Background

14. In the CPNI Order, the Commission addressed the instances in which a carrier could use, disclose, or permit access to CPNI without prior customer approval under section 222(c)(1)(A). Section 222(c)(1) provides that a telecommunications carrier that receives or obtains CPNI by virtue of its ''provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable [CPNI] in the provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publication of directories.''

15. After considering the record, statutory language, history, and structure of section 222, we concluded that Congress intended that a carrier's use of CPNI without customer approval should depend on the service subscribed to by the customer. Accordingly, the Commission adopted the ''total service approach'' which allows carriers to use a customer's entire record, derived from complete service subscribed to from that carrier, to market improved services within the parameters of the existing customer-carrier relationship. The total service approach permits carriers to use CPNI to market offerings related to the customer's existing service to which the customer presently subscribes. Under the total service approach, the customer retains ultimate control over the permissible marketing use of CPNI, a balance which best protects customer privacy interests while furthering fair competition. Presented with the opportunity to permit or prevent a carrier from accessing CPNI for marketing purposes, the customer has the ability to determine the bounds of the carrier's use of CPNI.

2. Petitions for Reconsideration

16. GTE urges the Commission to reconsider the total service approach to allow carriers to use, without customer consent, CPNI derived from the provision of a package of telecommunications services in order to market other telecommunications services to which a customer does not subscribe. This ''package approach'' is only a slight variation of the ''single category approach,'' which we specifically analyzed and rejected in the *CPNI Order.* The single category approach would have permitted carriers to use CPNI obtained from the provision of any telecommunications service, including local or long distance or CMRS, to market any other service offered by the carrier, regardless of whether the customer subscribes to such service from that carrier.

17. We decline to grant GTE reconsideration on this issue because that would vitiate the total service approach and the attendant protection of a customer's sensitive information. The hallmark of the total service approach is that the customer, whose privacy is at issue, establishes the bounds of his or her relationship with the carrier. We note, however, that to the extent a customer already subscribes to a particular service or subscribes across services, GTE or any carrier can use the customer's CPNI to market or create enhancements to those services. Congress could not have intended an interpretation of section 222 that leaves the consumer without privacy protection. We concluded in the *CPNI Order,* and nothing has persuaded us otherwise here, that the total service approach best protects customer privacy while furthering fair competition. GTE seeks to use CPNI derived from the provision of certain telecommunications services to market other telecommunications services to which the customer does not subscribe. We conclude that this would not further the privacy goals that Congress sought to achieve in section 222. Over time, the total service approach rewards successful carriers who offer integrated packages by enabling marketing in more than one category but in a manner that respects customer privacy.

18. GTE requests, in the alternative, that the Commission adopt a rule that permits the use of CPNI for the limited purpose of identifying customers from whom it would like to solicit express, affirmative approval to use their CPNI for marketing out-of-category services. We conclude that such use of CPNI is implicit in section 222(c)(1) because the solicitation of approval is a logical prerequisite to actually obtaining approval. The carrier's use of CPNI under these limited circumstances, therefore, is merely a part of the process of obtaining approval. Thus, the use of CPNI for solicitations of approval to use CPNI to market services outside the bounds of the existing customer-carrier relationship necessarily falls under the customer approval exception stated in section 222(c)(1).

19. NTCA urges us to reconsider the total service approach because it is particularly disadvantageous to small, rural LECs looking to launch new service offerings. We addressed and rejected this argument in the *CPNI Order.* NTCA has presented no new evidence to persuade us that its members are disproportionately affected in any cognizable way by these requirements.

3. Petitions for Forbearance

20. Alternatively, GTE and Ameritech seek forbearance from the application of the total service approach to the marketing of out-of-category packages or service enhancements to customers. After careful review, we believe the forbearance test is not met. Forbearance

under section 10 of the Act is required where:

(1) Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) Enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) Forbearance from applying such provision or regulation is consistent with the public interest.

Section 10(b) provides that, in making the determination whether forbearance is consistent with the public interest, the Commission must consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services.

21. *Section 10(a)(1).* GTE and Ameritech assert that the ability to offer service packages will not result in unreasonable or discriminatory rates.

22. The primary focus of the CPNI rules is not, nor ever has been, intended to ensure reasonable rates or practices. Therefore, we determine that enforcement of the total service approach is not necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable and are not unjustly or unreasonably discriminatory.

23. *Section 10(a)(2).* GTE asserts that prohibiting the use of CPNI without approval to market package enhancements is not necessary to protect consumers. Ameritech believes CPNI protection is not necessary where, like here, the use is consistent with customer expectations.

24. We conclude that the second criterion for forbearance is not met because customers' privacy interests would not be adequately protected absent the total service approach. GTE and Ameritech would have us forbear from enforcing the total service approach when consumer protection is a primary concern of section 222. Specifically, the customer approval process for the use of CPNI is necessary to protects customers' privacy expectations because, as stated in the CPNI Order, we do not believe that we can properly infer that a customer's decision to purchase one type of service offering constitutes approval for a carrier to use CPNI to market other service offerings to which the customer does not subscribe. Nor are we aware of any other law, regulation, agency or state requirement that would substitute for the effectiveness of our approach. The total service approach protects customer privacy expectations by placing the control over the approval process in the hands of the customer. The total service approach also protects customers in many instances where they would not realize potentially sensitive, personal information had been accessed or used. The GTE and Ameritech approaches lack this crucial element of consumer protection.

25. *Section 10(a)(3).* GTE believes forbearance is in the public interest because of the reduction in carriers' administrative costs to communicate with customers where a carrier can use CPNI to market across service categories without the need for customer approval.

26. We find that forbearance would not be in the public interest. The privacy goals of the statute are not met where carriers can use CPNI without customer approval to sell products and services outside the existing customer-carrier relationship. Although reducing the administrative costs to carriers may assist these companies in competing with other carriers, we find that any potential benefit is outweighed by the need to protect customer privacy. Customers who are interested in obtaining more information can arrange to do so easily by granting consent for their carriers' use of CPNI.

27. Pursuant to section 10(b) of the Act, we have evaluated whether forbearance from the total service approach will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services. We agree that, as a general matter, reducing carriers' administrative and regulatory costs promotes competitive market conditions and would improve the ability of new entrants to introduce new, improved combinations of competitive services and products. However, we are concerned that the GTE and Ameritech proposals, which eliminate the boundaries we have established for the use of CPNI, may unreasonably deprive other telecommunications carriers the opportunity to compete for a customer's business. The ability to use CPNI from an existing service relationship to market new services to a customer bestows an enormous competitive advantage on those carriers that currently have a service relationship with customers, particularly incumbent exchange carriers and interexchange carriers with a large existing customer base. This, in turn, poses a significant risk to the development of competition. For this reason, as well, we cannot find that forbearance is in the public interest.

4. Requests for Clarification

28. Several petitioners request clarification of aspects of the total service approach and its application in specific contexts. We address these requests.

a. Multiple Lines and Carriers. 29. MCI requests clarification as to whether the total service approach should be applied on a subscriber line-by-line basis or to the subscriber's services overall. MCI poses a second, related question, whether a customer can have more than one carrier in any given service category, thus allowing both carriers to market other services in the same category to that customer.

30. We believe that the total service approach applies to the *customer's* total telecommunications service subscription, and proper use of CPNI is not necessarily limited to the line from which it was derived. Section 64.2005(a) of our rules permits a telecommunications carrier to use CPNI for the purpose of marketing service offerings among the categories of service already subscribed to by the customer from the same carrier. Although MCI proposes to use CPNI from one line to market to another line of the same customer, the use of CPNI is permissible because it remains within the category of service. As to MCI's second question, we do not limit a customer's choice to select more than one carrier in a given service category. For the same reasons cited above, where the use of CPNI remains within a service category, a carrier is able to market that same service to the customer without the need for express customer approval. In this manner, a carrier's attempt to garner more of the customer's business is pro-competitive and does not impinge on a customer's privacy.

b. Codification of Service Categories. 31. MCI and CommNet request that the Commission explicitly state that all telecommunications services fall within three groupings—local, interLATA, and CMRS.

32. We decline to do so because it would have the effect of grafting onto the total service approach one of the critical flaws of the so-called ''three category'' approach. As explained in greater detail in the *CPNI Order,* the three category approach parsed telecommunications services into the three traditional service distinctions—local, interLATA, and CMRS. Given the dynamic nature of the telecommunications industry, we can not assume that all services necessarily fall into such categories. We believe the

total service approach is sufficiently flexible to incorporate new and different categories without periodic reviews to ascertain whether changes in the competitive environment should translate into changes in service categories. Rather, it is unnecessary to modify the total service approach in this regard or to further codify the three service categories in the rules.

c. Use of CPNI to Market Paging.

33. In the *CPNI Order,* the Commission determined that CMRS should be viewed in the entirety, when considering the ''total service approach.'' CommNet urges the Commission to revise its rules to make it clear that the service categories to which the ''total service'' relationship applies are only local exchange service, interexchange service, and CMRS, so that a paging carrier could use CPNI to market cellular service and vice versa. U S WEST objects on the grounds that the language of the current rule was taken directly from the statute and that the categories may blur over time and may disappear as customers migrate to single source providers.

34. We find that our rules are clear that under the total service approach, a CMRS carrier may use CPNI to market any CMRS service, including paging and cellular service. Therefore, no revision of the rules is required.

d. IntraLATA Toll Services. 35. In the *CPNI Order,* the Commission concluded that insofar as both local exchange carriers and interexchange carriers currently provide short-haul toll, it should be considered part of both local and long-distance service. We further concluded that permitting short-haul toll to ''float'' between categories would not confer a competitive advantage upon either interexchange or local exchange carriers. MCI concludes that the provision of short-haul toll may only be considered part of carrier's ''primary service category'' and requests that we make such a clarification.

36. We agree with MCI that our prior conclusion requires clarification. MCI argues that if a local exchange carrier is providing local service, then it may use a customer's local service CPNI to market intraLATA toll to that customer, and vice-versa, and if an interexchange carrier is providing long distance service to a customer, then it may use that customer's long distance CPNI to market intraLATA toll to him or her, and vice versa. We conclude that short-haul toll shall be considered as falling within the category of service the carrier is already providing to the customer. Long distance carriers providing intraLATA toll service, however, need obtain customer approval to use intraLATA toll CPNI to market local service. Likewise, local exchange carriers would need customer approval to use intraLATA toll CPNI to market interLATA long distance service. In this way, the rule is fair to both interexchange and local exchange carriers and treats them symmetrically.

B. Use of CPNI to Market Customer Premises Equipment and Information Services

1. Background

37. Section 222(c)(1) states that, ''[e]xcept as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains [CPNI] by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable [CPNI] in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.'' In the *CPNI Order,* we concluded that Congress intended that section 222(c)(1)(A) govern carriers' use of CPNI for providing *telecommunications services* and that section 222(c)(1)(B) governs carriers' use of CPNI for *non-telecommunications services.* Based upon the language of section 222(c)(1), we further concluded that: (1) inside wiring, CPE, and certain information services do not fall within the scope of section 222(c)(1)(A) because they are not ''telecommunications services''; and (2) CPE and most information services do not fall under section 222(c)(1)(B) because they are not ''services necessary to, or used in, the provision of such telecommunications service.'' We now find that the phrase ''services necessary to, or used in, the provision of such telecommunications service'' should be given a broader reading than the one given in the *CPNI Order.* The record produced on reconsideration persuades us that a different statutory interpretation is permissible, and importantly, would lead to appropriate policy results consistent with the statutory goals. Therefore, we conclude that section 222(c)(1)(B) allows carriers to use CPNI, *without* customer approval, to separately market CPE and many information services to their customers. We further clarify that the tuning and retuning of CMRS units and repair and maintenance of such units is a service necessary to or used in the provision of CMRS service under section 222(c)(1)(B). Finally, we deny petitioners' requests that we forbear from applying these restrictions for related CPE and information services.

2. Petitions for Reconsideration

38. *Customer Premises Equipment and Information Services under Section 222(c)(1).* We grant the petitions for reconsideration that argue that CPE and certain information services are ''necessary to, or used in, the provision of'' telecommunications services, and therefore use of CPNI derived from the provision of a telecommunications service, without customer approval, to market CPE and information services would be permitted under section 222(c)(1)(B). Under our previous interpretation, the exception was narrowly construed, resulting in very few services for which CPNI could be shared. Indeed, we rejected all CPE because it was not a ''service'' and most information services because they were not necessary to or used in the carrier's provision of the telecommunications service. While this interpretation is not inconsistent with the statutory language, we are persuaded that the better interpretation is that the exception includes certain products and services provisioned by the carrier with the underlying telecommunications service to comprise the customer's total service. This is because those related services and products facilitate the underlying telecommunications service and customers expect that they will be used in the provisioning of that service offering. Our new interpretation accords with the Commission's stated intention in the *CPNI Order* to revisit and if necessary revise its conclusions regarding customer expectations as those expectations changed in the marketplace with advancements in technology or as new evidence of the evolution of customer expectations becomes available to the Commission. Such evidence has now been made available to us by the record developed on reconsideration.

39. When evaluated as a whole, the exception can be reasonably interpreted to include those products used in the provision of telecommunications, including directories and CPE. First, we find statutory support for this interpretation through the only example Congress included in the exception—the publishing of directories. As described in the *CPNI Order,* directories are ''necessary to and used in'' the provision of service because without access to phone numbers, customers cannot complete calls. A directory is not a ''service,'' but rather, like CPE, is a product. Consistent with the statutory exception, however, the ''publishing'' of the directory is a service—the service by

which the carrier provisions the product necessary to, or used in, the customer's telecommunications service. Thus, Congress' publishing of directories example supports including those products as well as services provisioned by the carrier that are used in and necessary to the customer's telecommunications service. We believe that our previous interpretation construed the term ''services'' in isolation from the phrase ''necessary to, or used in.'' While it is obvious that CPE itself is not a service, the provision of CPE is a service that is necessary to, or used in the provision of the underlying telecommunications service. Customers cannot make, or complete, calls without CPE. This is consistent with Congress' example of the publishing of directories in section 222. Therefore, this finding concerning CPE is limited to section 222. Also, the CPE that is included in this exception is limited to CPE that is used in the provision of the telecommunications service from which the CPNI is derived.

40. Second, our broader statutory interpretation appropriately protects the customer's reasonable expectations of privacy in connection with CPNI, which many petitioners argue is the appropriate test for determining the limitations on the use of CPNI without a customer's approval. We are persuaded that CPE and many information services properly come within the meaning of section 222(c)(1)(B).

41. In the wireless context, our regulation of CMRS providers and the history of the industry has allowed the development of bundles of CPE and information services with the underlying telecommunications service. Thus, information services and CPE offered in connection with CMRS are directly associated and developed together with the service itself. Indeed, we are persuaded by the record and our observations of the development of the CMRS market generally that the information services and CPE associated with CMRS are reasonably understood by customers as within the existing service relationship with the CMRS provider. Customers expect to have CPE and information services marketed to them along with their CMRS service by their CMRS provider. Accordingly, we conclude that such CPE and information services come within the meaning of ''necessary to, or used in,'' the provision of service. In the CMRS context, carriers should be permitted to use CPNI, without customer approval, to market information services and CPE to their CMRS customers.

42. The wireline industry has developed somewhat differently from CMRS and, while the analysis is the same, the results concerning how carriers may use CPNI accordingly differ from the wireless industry. No evidence has been produced on the record which shows that allowing wireline carriers to market CPE to their customers, using CPNI without customer consent, violates customers' expectations. We are convinced that such usage by carriers would be beneficial to customers as new and advanced products develop. Therefore, wireline carriers should be permitted to use CPNI, without customer approval, to market CPE to their customers.

43. Within the broader reading of the statute, we find that certain wireline information services should also be considered necessary to, or used in, the provision of the underlying telecommunications service. In the *CPNI Order*, the Commission listed several information services that it believed should not be considered necessary to, or used in, the underlying telecommunications service: call answering, voice mail or messaging, voice storage and retrieval services, and fax storage and retrieval services. Applying the broader reading of the statute, along with the new evidence on the record, we now believe that all of these services should be considered necessary to, or used in, the provision of the underlying telecommunications service because customers have come to depend on these services to help them make or complete calls. The record indicates that customers have come to expect that their service provider can and will offer these services along with the underlying telecommunications service. Therefore, carriers may use CPNI, without customer approval, to market call answering, voice mail or messaging, voice storage and retrieval services, and fax storage and retrieval services.

44. We continue to exclude from this list, as the Commission did in the *CPNI Order*, Internet access services. There is no convincing new evidence on the record that shows that such services are necessary to, or used in, the making of a call, even in the broadest sense. There is also no evidence, currently, that customers expect to receive such services from their wireline provider, or that they expect to use such services in the way that they expect to receive or use the above-listed services.

45. We will, however, add protocol conversions to the list of services that carriers may market using CPNI without customer approval. In its petition, Bell Atlantic requests that we redefine protocol conversion as a telecommunications service. Bell Atlantic asserts that protocol conversions that do not alter the underlying information sent and received should not be defined as information services. We do not believe that protocol conversions should be redefined as a telecommunications service but because protocol conversions are necessary to the provision of the telecommunications service, in the instances where they are used, protocol conversions should be included in the group of information services listed above. Accordingly, we grant Bell Atlantic's request to use CPNI to market, without customer approval, protocol conversions.

3. Petitions for Forbearance

a. Introduction. 46. In the alternative, many parties urge the Commission to forbear from prohibiting CMRS providers and wireline carriers from using CPNI to market CPE and/or information services without customer approval. As we described in detail, section 10 of the Act requires the Commission to forbear from regulation when: (1) enforcement is not necessary to ensure that the carrier's charges and practices are just and reasonable; (2) enforcement is not necessary for the protection of consumers; and (3) forbearance is consistent with the public interest.

b. CMRS Providers. 47. In the preceding section, we granted the petitions for reconsideration to allow CMRS providers to use CPNI, without customer approval, to market CPE and information services to their customers. Therefore, we deny as moot the petitions for forbearance from section 222's prohibition against CMRS providers using CPNI to market, without customer approval, CPE and information services.

c. Wireline Carriers. 48. In the preceding section, we granted the petitions for reconsideration to allow wireline carriers to use CPNI, without customer approval, to market CPE and some information services to their customers. Therefore, we deny as moot the petitions requesting that we forbear from enforcing section 222's prohibition against wireline carriers to use CPNI to market CPE and information services such as call answering, voice mail or messaging, voice storage and retrieval services, fax storage and retrieval services, and protocol conversions. Bell Atlantic has requested that we forbear from enforcing section 222's prohibition against using CPNI without prior customer consent to market all

information services. We deny this request.

49. *Section 10(a)(1).* The primary focus of the CPNI rules is not, nor ever has been, intended to ensure reasonable rates or practices. Therefore, we determine that enforcement of the restrictions on the use of CPNI to market those information services that are not ''necessary to, or used in, the provision of'' telecommunications services are not necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable and are not unjustly or unreasonably discriminatory.

50. *Section 10(a)(2).* We are unable to conclude that forbearing from enforcement of restrictions on the use of CPNI for marketing all information services would satisfy the second criterion. We note, however, that the ''integrated'' services that Bell Atlantic identifies include the information services which we have found above to be necessary to, or used in, the provision of the underlying telecommunications service. We have, on reconsideration, identified those types of information services for which our broader interpretation of section 222(c)(1)(B) is more in line with customer expectations and congressional intent. For these services, forbearance is not necessary. With regard to other information services such as Internet access, we find that enforcing section 222(c)(1)(B) is still necessary to protect consumers. Requiring prior consent protects customers in many instances where they would not realize potentially sensitive, personal information had been accessed or used. As noted above, there is no evidence, currently, that customers expect to receive such services from their wireline provider, or that they expect to use such services in the way that they expect to receive or use more integrated services. Nor are we aware of any other law, regulation, agency or state requirement that would substitute for the effectiveness of a prior consent requirement, which protects customer privacy expectations by placing the control over the use of CPNI for purposes of marketing non-integrated information services in the hands of the customer.

51. *Section 10(a)(3).* We concluded in the CPNI Order, however, that ''[u]nlike the Commission's pre-existing policies under Computer III, which were largely intended to address competitive concerns, section 222 of the Act explicitly directs a greater focus on protecting customer privacy and control.'' We further concluded that ''[t]his new focus embodied in section 222 evinces Congress' intent to strike a balance between competitive and customer privacy interests different from that which existed prior to the 1996 Act, and thus supports a more rigorous approval standard for carrier use of CPNI than in the prior Commission Computer III framework.'' More specifically, we concluded that an opt-out scheme does not provide any assurance that consent for the use of a customer's CPNI would be informed, and found that opt-out does not adequately protect customer privacy interests. Bell Atlantic, therefore, is incorrect in its assertion that our conclusions in Computer III dictate our findings relating to the public interest. We also conclude that the record on forbearance suggested here does not convince us that the privacy goals of the statute are met where carriers can use CPNI without express customer approval to sell services outside the existing customer-carrier relationship. We accordingly find that Bell Atlantic's request for forbearance of section 222's affirmative approval requirement is generally inconsistent with the public interest. Customers who are interested in obtaining more information can arrange to do so easily by granting consent for their carriers' use of CPNI. We have found no public interest benefits that would outweigh these concerns.

52. Pursuant to section 10(b) of the Act, we have evaluated whether forbearance from the prior consent requirement will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services. As we concluded above, the ability to use CPNI from an existing service relationship to market new services to a customer bestows an enormous competitive advantage for those carriers that currently have a service relationship with customers, particularly incumbent exchange carriers and interexchange carriers with a large existing customer base. This, in turn, poses a significant risk to the development of competition. Therefore, to the extent that Bell Atlantic is requesting forbearance from section 222's restrictions on the use of CPNI to market Internet access service, we find that such forbearance would neither promote competition nor enhance competition among telecommunications service providers. For instance, we recently stated that, although many Internet service providers (ISPs) ''compete against one another, each ISP must obtain the underlying basic services from the incumbent local exchange carrier, often still a BOC, to reach its customers.'' Because of the competitive advantage that many BOCs retain, we concluded that we would not remove certain safeguards designed to protect against BOC discrimination despite the competitive ISP marketplace. We reach a similar conclusion here: giving wireline carriers, particularly ILECs, the right to use CPNI without affirmative customer approval to market Internet access services could damage the competitive Internet access services market at this point in time. Accordingly, we deny Bell Atlantic's petition for forbearance on this issue.

d. Forbearance from all CPNI Rules for CMRS Providers. 53. A few parties urge the Commission to forbear from imposing any CPNI obligations on CMRS providers. Forbearance from enforcing all CPNI rules against CMRS carriers, according to one petitioner, will permit many beneficial and pro-competitive marketing practices to continue. The Commission must forbear from enforcing its rules or any statutory provision where the criteria of the forbearance test, set out in Part V.A.3 are satisfied. We deny this request.

54. *Section 10(a)(1).* As we have previously stated, the primary focus of the CPNI rules is not, nor ever has been, intended to ensure reasonable rates or practices. Therefore, we determine that enforcement of the CPNI rules for CMRS carriers is not necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable and are not unjustly or unreasonably discriminatory.

55. *Section 10(a)(2).* We are unable to find that CMRS customers' privacy interests would be adequately protected absent section 222 and the rules promulgated in this proceeding. We are concerned, for example, that customers would be harmed by elimination of the restriction on carriers' use of CPNI to identify or track customers who call competing service providers contained in section 64.2005(b)(1) of our rules. Section 222 and our implementing rules protect customers in many instances where they would not realize potentially sensitive, personal information had been accessed or used. Moreover, we would be remiss in our duty under the statute if we created an environment in which CMRS customers' only recourse was to switch carriers after discovering that their CPNI had been used without authorization. Nor are we aware of any other law, regulation, agency or state requirement that would substitute for the effectiveness of our rules implementing section 222. Consequently, the second

criterion for forbearance has not been met.

56. *Section 10(a)(3).* We do not find that forbearance from section 222 and our CPNI rules for all CMRS providers is consistent with the public interest. Complete forbearance would eliminate section 222's procedures for the protection of both customers and carriers, such as the process for transferring CPNI from a former carrier to a new carrier pursuant to a customer's written request and the obligation to protect carrier proprietary information. Pursuant to section 10(b) of the Act, we have evaluated whether forbearance from section 222 for CMRS carriers will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services. On balance, we find that forbearance from the full range of CPNI protections would undermine consumer privacy to an extent that outweighs the potential benefits demonstrated on the record in terms of carrier cost savings. Therefore, we conclude that there is insufficient basis for a public interest finding under the third criterion.

C. Use of CPNI to Market to Former and ''Soon-to-be Former'' Customers

1. Background

57. The *CPNI Order* adopted section 64.2005(b)(3) to prohibit a carrier from using or accessing CPNI to regain the business of a customer who has switched to another provider. The Commission decided as a matter of statutory interpretation that once a customer terminates service from a carrier, CPNI derived from the previously subscribed service may not be used to retain or regain that customer. Specifically, the Commission foreclosed the use of CPNI for customer retention purposes under section 222(c)(1) because it felt such use was not carried out in the ''provision of'' service, but rather, for the purpose of retaining a customer that has already taken steps to change its provider. The *CPNI Order* also precluded the use of CPNI under section 222(d)(1), insofar as such use would be undertaken to market a service, rather than to ''initiate'' a service within the meaning of that provision.

58. A significant majority of the petitioners have requested that the Commission reconsider or forbear from the restrictions of section 64.2005(b)(3), which has been referred to as the ''winback'' prohibitions.

2. ''Winback''

a. Discussion. 59. Petitioners challenge the winback restrictions on a variety of grounds. On reconsideration, we conclude that all carriers should be able to use CPNI to engage in winback marketing campaigns to target valued former customers that have switched to other carriers. After reviewing the fuller record on this issue developed on reconsideration, we are persuaded that winback campaigns are consistent with section 222(c)(1) and in most instances facilitate and foster competition among carriers, benefiting customers without unduly impinging upon their privacy rights. Accordingly, we reverse our position and eliminate rule 64.2005(b)(3).

60. On reconsideration, we believe that section 222(c)(1)(A) is properly construed to allow carriers to use CPNI to regain customers who have switched to another carrier. While section 222(c)(1) is susceptible to different interpretations, we now think that the better reading of this language permits use of CPNI of former customers to market the same category of service from which CPNI was obtained to that former customer. We agree with those petitioners who argue that the use of CPNI in this manner is consistent with both the language and the goals of the statute. Section 222(c)(1)(A) permits the use of CPNI in connection with the ''provision of the telecommunications service from which the information is derived.'' The marketing of service offerings within a given presubscribed telecommunications service is encompassed within the ''provision of'' that service. In developing the total service approach, the Commission recognized that marketing is implicit in the term ''provision'' as used in section 222(c)(1). The *CPNI Order* stated that ''we believe that the best interpretation of section 222(c)(1) is the total service approach, which affords carriers the right to use or disclose CPNI for, among other things, *marketing related offerings* within customers' existing service for their benefit and convenience.'' While we recognize that this discussion in the CPNI Order also referred to the customer's ''existing'' service, we now conclude upon further reflection that our focus should not be so limited. Common sense tells us that customers are aware of and expect that their former carrier has information about the services to which they formerly subscribed. Businesses do not customarily purge their records of a customer when that customer leaves. We therefore disagree with the assertion that extending winback marketing for the same service to a former customer is an indefensible stretch of the total service approach.

61. Because customer expectations form the basis of the total service approach, they properly influence our understanding of the statute, a goal of which is to balance competitive concerns with those of customer privacy. Customers expect carriers to attempt to win back their business by offering better-tailored service packages, and that such precise tailoring is most effectively achieved through the use of CPNI. Winback restrictions may deprive customers of the benefits of a competitive market. Winback facilitates direct competition on price and other terms, for example, by encouraging carriers to ''out bid'' each other for a customer's business, enabling the customer to select the carrier that best suits the customer's needs.

62. Some commenters argue that ILECs should be restricted from engaging in winback campaigns, as a matter of policy, because of the ILECs' unique historic position as regulated monopolies. We believe that such action by an ILEC is a significant concern during the time subsequent to the customer's placement of an order to change carriers and prior to the change actually taking place. Therefore, we have addressed that situation at Part V.C.3. However, once a customer is no longer obtaining service from the ILEC, the ILEC must compete with the new service provider to obtain the customer's business. We believe that such competition is in the best interest of the customer and see no reason to prohibit ILECs from taking part in this practice.

63. We are also unpersuaded by the allegations that an incumbent carrier's use of CPNI in winback campaigns amounts to a predatory practice designed to prevent effective market entry by new competitors. Contrary to the commenters' suggestions, we believe such use of CPNI is neither a *per se* violation of section 201 of the Communications Act, as amended, nor the antitrust laws. Prior to the adoption of the rules promulgated under 1996 Act, incumbent carriers were able to use CPNI to regain customers lost to competitors. Assuming incumbent LECs have sufficient market power to engage in predatory strategies, they are constrained in their ability to raise and lower prices by our tariff rules and non-discrimination requirements. Because winback campaigns can promote competition and result in lower prices to consumers, we will not condemn such practices absent a showing that they are truly predatory.

64. Thus, we conclude that the statute permits a carrier evaluating whether to launch a winback campaign to use CPNI to target valued former customers who have switched service providers.

65. An important limitation derived from the statutory language is that the carrier may use CPNI of the former customer to offer that customer the service or services to which the customer previously subscribed. It would be inconsistent with the total service approach for a carrier to use such CPNI to offer new services outside the former customer-carrier relationship.

66. Some petitioners assert that winback is permissible under the exceptions enumerated in Section 222(d)(1) that allow the use of CPNI without customer approval to ''render'' or ''initiate'' service. Based upon our decision that the use of CPNI to winback customers is consistent with section 222(c)(1), we decline to reach these arguments. Similarly, we need not address arguments concerning the constitutionality of, propriety under the APA, and forbearance from, the former rule. Consequently, we eliminate § 64.2005(b)(3). We therefore do not need to reach the clarification petitions submitted on the former rule.

3. Retention of Customers

a. Background. 67. As noted above, the *CPNI Order* also prohibited a carrier's access to or the use of the CPNI of a ''soon-to-be-former'' customer to market the same services to retain that customer. The *CPNI Order* did not distinguish between marketing for the purpose of retaining customers versus regaining them. As explained above, on reconsideration, we believe that use of CPNI to regain former customers falls within the ambit of section 222(c)(1). We conclude here that use of CPNI to retain customers ordinarily does not come under section 222(c)(1), and in such instances would likely violate section 222(b).

b. Discussion. 68. We conclude that section 222 does not allow carriers to use CPNI to retain soon-to-be former customers where the carrier gained notice of a customer's imminent cancellation of service through the provision of carrier-to-carrier service. We conclude that competition is harmed if *any* carrier uses carrier-to-carrier information, such as switch or PIC orders, to trigger retention marketing campaigns, and consequently prohibit such actions accordingly.

69. The Commission previously determined that carrier change information is carrier proprietary information under section 222(b). In the *Slamming Order*, 64 FR 9219, February 24, 1999, the Commission stated that pursuant to section 222(b), the carrier executing a change ''is prohibited from using such information to attempt to change the subscriber's decision to switch to another carrier.'' Thus, where a carrier exploits advance notice of a customer change by virtue of its status as the underlying network-facilities or service provider to market to that customer, it does so in violation of section 222(b). We concede that in the short term this prohibition falls squarely on the shoulders of the BOCs and other ILECs as a practical matter. As competition grows, and the number of facilities-based local exchange providers increases, other entities will be restricted from this practice as well.

70. We agree that section 222(b) is not violated if the carrier has independently learned from its retail operations that a customer is switching to another carrier; in that case, the carrier is free to use CPNI to persuade the customer to stay, consistent with the limitations set forth in the preceding section. We thus distinguish between the ''wholesale'' and the ''retail'' services of a carrier. If the information about a customer switch were to come through independent, retail means, then a carrier would be free to launch a ''retention'' campaign under the implied consent conferred by section 222(c)(1).

c. Petitions for Forbearance. 71. A number of petitioners seek forbearance from restrictions that limit the ability of a carrier to retain a soon-to-be former customer who has indicated an intent to switch carriers. Petitioners request forbearance from the application of rules prohibiting retention marketing, however, as part of their overall requests that the Commission forbear from applying winback restrictions generally. Because the Commission has revised its interpretation and eliminated rule 64.2005(b)(3), that portion of their petitions is moot.

72. Section 10 of the Act requires the Commission to forbear from regulation when: (1) enforcement is not necessary to ensure that the carrier's charges and practices are just and reasonable; (2) enforcement is not necessary for the protection of consumers; and (3) forbearance is consistent with the public interest. For the reasons discussed below, we conclude the forbearance standard has not been met to the extent that carriers would seek to use CPNI to regain a soon-to-be former customer, precipitated by the receipt of a carrier-to-carrier order.

73. *Section 10(a)(1).* Petitioners assert that limiting the use of CPNI in retention efforts is not necessary to ensure just, reasonable, and nondiscriminatory rates.

74. We agree that the primary focus of the CPNI rules is not, nor ever has been, intended to ensure reasonable rates or practices. Therefore, we determine that enforcement of section 222's prohibition against allowing a carrier to use proprietary information that it receives by virtue of fulfilling carrier-to-carrier orders in a ''wholesale'' capacity is not necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable and are not unjustly or unreasonably discriminatory.

75. *Section 10(a)(2).* Petitioners assert that retention restrictions are not necessary to protect customers generally. Although we agree that privacy concerns are not particularly jeopardized in winback situations, generally, that does not mean that enforcement of this restriction is unnecessary to protect customers. Rather, we conclude that consumers' substantial interests in a competitive and fair marketplace would be undermined if this restriction was not enforced. Consequently, the second criterion is not satisfied.

76. *Section 10(a)(3).* Finally, petitioners contend that customer retention is in the public interest. We are not persuaded, however, that permitting carriers to unfairly use information that they obtain in a ''wholesale'' capacity is in the public's interest. We conclude that there is insufficient basis for a public interest finding in this instance under the third criterion. Therefore, we deny the forbearance petitions on this issue.

D. Disclosure of CPNI to New Carriers When a Customer is ''Won''

77. In the *CPNI Order* we definitively concluded that the term ''initiate'' in section 222(d)(1) does not require that a customer's CPNI be disclosed by a carrier to a competing carrier who has ''won'' the customer as its own. We found that section 222(d)(1) applies only to carriers already possessing the CPNI, within the context of the existing service relationship, and not to any other carriers merely seeking access to CPNI. We noted, however, that section 222(c)(1) does not prohibit carriers from disclosing CPNI to competing carriers upon customer approval. Accordingly, we reasoned that although an incumbent carrier is not required to disclose CPNI pursuant to section 222(d)(1) or section 222(c)(2) absent an affirmative written request, local exchange carriers may need to disclose a customer's service record upon oral approval of a customer to a competing

carrier prior to its commencement of service as part of a local exchange carrier's section 251(c)(3) and (c)(4) obligations. In this way, we concluded, section 222(c)(1) permits the sharing of customer records necessary for the provisioning of service by a competitive carrier. Finally, we also noted that a carrier's failure to disclose CPNI to a competing carrier that seeks to initiate service to that customer who wishes to subscribe to a competing carrier's service, may well constitute an unreasonable practice in violation of section 201(b), depending on the circumstances.

78. We reject MCI's various requests for disclosure of CPNI by former carriers, *without* customer approval, to new carriers to enable the new carriers to initiate service. We deny MCI's petition in this regard.

79. First, MCI and TRA ask that we find that section 222(d)(1) allows ''one carrier to disclose CPNI to another to enable the latter to initiate service *without* customer approval'' thereby reversing our conclusion in the *CPNI Order*. Neither MCI nor TRA has presented any new facts or arguments that the Commission did not fully consider in the *CPNI Order* regarding the interpretation of section 222(d)(1). We therefore deny MCI and TRA's request that we reverse this portion of the *CPNI Order*.

80. Second, MCI also requests that the Commission, in any case, find that section 222(c)(1) authorizes the disclosure of CPNI *without* customer approval. We find that MCI's request is contrary to our conclusion in the *CPNI Order* that the language of 222(c)(1)(A) reflects Congress' judgment that customer approval for carriers to use, disclose, and permit access to CPNI can be inferred in the context of *an existing customer relationship*. We reasoned that such an inference is appropriate because the customer is aware that his or her carrier has access to CPNI, and, through subscription to the carrier's service, has implicitly approved the carrier's use of CPNI *within the existing relationship*. We are not persuaded that the disclosure of CPNI to a different carrier to initiate service *without* customer approval for that disclosure would be contemplated by a customer as a carrier's use of his or her CPNI *within* the existing customer-carrier relationship. As such, we deny MCI's request.

81. Third, MCI also asserts that sections 272, 201(b), and 202(a) require BOCs and other ILECs that disclose CPNI to affiliates without customer approval in order to initiate service to likewise disclose CPNI to any other requesting carrier ''needing it to initiate service. MCI has not provided any reasonable basis for altering these conclusions. Further, we are not persuaded by MCI's unsupported request that section 202(a) would require such relief. Accordingly, we deny MCI's request.

82. Fourth, MCI further argues that if the Commission does not grant any of the relief requested, then it should allow carriers to notify customers that their failure to approve the disclosure of CPNI to a new carrier may disrupt the installation of any new service they may request. As MCI has not persuaded us, however, that a customer's failure to approve such a disclosure may disrupt the installation of service, we deny MCI's request.

83. Finally, MCI requests that the Commission ''reconfirm'' that CPNI is an unbundled network element ''that BOCs and other ILECs must provide to all requesting carriers under section 251(c)(3) of the Act.'' This is not a fair characterization of the *CPNI Order's* conclusion. Rather, the *CPNI Order* held that local exchange carriers may need to disclose a customer's service record upon oral approval of a customer to a competing carrier prior to its commencement of service as part of a local exchange carrier's section 251(c)(3) and (c)(4) obligations. This conclusion does not indicate, as MCI has implied, that CPNI is an unbundled network element subject to section 251(c)(3)'s unbundling requirements separate from the Commission's requirement that incumbent carriers provide unbundled access to operations support systems and the information they contain. Therefore, MCI incorrectly concludes that the *CPNI Order* found that CPNI is an unbundled network element. In any case, the United States Supreme Court recently concluded that the Commission's unbundling rule, § 51.319 of the Commission's rules, should be vacated. As a result, the Commission reopened CC Docket 96–98 to refresh the record on the issues of (1) how, in light of the Supreme Court ruling, the Commission should interpret the standards set forth in section 251(d)(2) of the Telecommunications Act of 1996; and (2) which specific network elements the Commission should require incumbent LECs to unbundle.

VI. ''Approval'' Under Section 222(c)(1)

A. Grandfathering Pre-existing Notifications

84. On May 21, 1998, the Common Carrier Bureau released the *Clarification Order* clarifying several issues in the *CPNI Order*. Among other things, the *Clarification Order* made it clear that carriers that have complied with the *Computer III* notification and prior written approval requirements in order to market enhanced services to business customers with more than 20 access lines are also in compliance with section 222 and the Commission's rules. CompTel and LCI request that the Commission reverse the *Clarification Order's* conclusion. We decline to do so for the reasons discussed below and, in fact, hereby adopt the *Clarification Order*.

85. As discussed in the *Clarification Order*, the framework established under the Commission's *Computer III* regime, prior to the adoption of section 222, governed the use of CPNI by the BOCs, AT&T, and GTE to market CPE and enhanced services. Under this framework, those carriers were obligated to: (1) provide an annual notification of CPNI rights to multi-line customers regarding enhanced services, as well as a similar notification requirement that applied only to the BOCs regarding CPE; and (2) obtain prior written authorization from business customers with more than 20 access lines to use CPNI to market enhanced services. The *CPNI Order*, however, replaced the *Computer III* CPNI framework in all material respects. In its place, the *CPNI Order* established requirements compelling carriers to provide customers with specific one-time notifications prior and proximate to soliciting express written, oral, or electronic approval for CPNI uses beyond those set forth in sections 222(c)(1)(A) and (B). The *CPNI Order* further established an express approval mechanism for such solicitations as it is the ''best means to implement this provision because it will minimize any unwanted or unknowing disclosure of CPNI'' and will also ''limit the potential for untoward competitive advantages by incumbent carriers.''

86. The *Clarification Order* noted that, like the requirements established in the *CPNI Order*, ''the notification obligation established by the *Computer III* framework required, among other things, that carriers provide customers with illustrative examples of enhanced services and CPE, expanded definitions of CPNI and CPE, information about a customer's right to restrict CPNI use at any time, information about the effective duration of requests to restrict CPNI, and background information to enable customers to understand why they were being asked to make decisions about their CPNI.'' The *Clarification Order* determined that these *Computer III* notifications comply materially with the form and content of the notices

required by the *CPNI Order*. In addition, the *Clarification Order* concluded that the *Computer III* requirement to obtain prior written authorization constitutes a form of express, affirmative approval, as required by section 222. Accordingly, the *Clarification Order* concluded that carriers that complied with the *Computer III* notification and prior written approval requirement in order to market enhanced services to such carriers are also in compliance with section 222 and the Commission's rules.

87. We agree with the Bureau that carriers that have complied with the *Computer III* notification and prior written approval requirements in order to market enhanced services to certain large business customers should be deemed in compliance with section 222 and the Commission's rules. For the reasons stated in the *Clarification Order*, we agree that the *Computer III* framework required carriers to provide these large business customers with adequate notice and obtain express, affirmative approval in material compliance with the form and content of those required by section 222 and the Commission's rules. Although it is true that the *Computer III* consents were given prior to the advent of local competition, we believe that the detailed notice and express, affirmative consent required under that regime compensate for this deficiency. Moreover, we are not persuaded by CompTel's assertion that the BOCs warnings that they *may* have to change the customer's account representatives put undue pressure on these business customers to relent. Finally, we also conclude that although some of the *Computer III* annual notifications may not have been ''proximate to'' the carrier solicitations as required by section 222, the *Computer III* regime's annual notification requirement and limitation to business customers with more than 20 access lines—requirements that we note are more stringent than required by section 222—materially satisfy the concerns we intended to address by the proximate notification requirement promulgated in the *CPNI Order*. As such, we agree with the Bureau that the *Computer III* notifications are in material compliance with section 222 and the Commission's rules, and adopt the reasoning and conclusions of the *Clarification Order* as our own.

88. Other carriers request that the Commission ''grandfather'' authorizations obtained subsequent to the enactment of section 222, but prior to the promulgation of rules in the *CPNI Order*.

89. We conclude, based upon the evidence presented in the record of this proceeding, that AT&T's solicitations constitute a good faith effort to materially comply with section 222 provided they are supplemented with the curative written notification of rights AT&T has offered to distribute. Accordingly, we find that AT&T may continue to rely on the approvals given, provided the approvals were obtained in the manner detailed above, so long as AT&T supplements those approvals with a written notice to customers of their rights including an explanation that they have the right to withdraw their approval.

90. Other than AT&T, the parties in this proceeding have not provided sufficient detail describing their solicitations for the Commission to make a determination of material compliance. We urge them to examine the showing made by AT&T as discussed above. We will accept further waiver requests that are materially compliant with section 222, provided the carriers requesting waivers can make a showing similar to the one made by AT&T.

B. Oral and Written Notification

1. Background

91. Section 64.2007 of the Commission's Rules sets out several requirements for carriers who wish to obtain a customer's consent for the use of that customer's CPNI. Vanguard requests that the Commission clarify the requirements established in the *Order* for telecommunications providers seeking customer consent for the use of CPNI. Vanguard expresses concern that the rules will hinder providers from obtaining consent at the time of the execution of initial customer agreements.

92. GTE requests clarification of the ''one-time'' notification rules, noting that, under § 64.2007(f)(3), solicitation of approval to use CPNI must be proximate to the notification of a customer's CPNI rights. GTE requests that the Commission ''clarify that written notice followed proximately by either written or oral solicitation is sufficient and is consistent with the FCC's finding that 'one-time' notice is sufficient.'' GTE contends that this would require amending § 64.2007(f)(4).

93. SBC also requests that the Commission clarify that written notification followed by either an oral or written solicitation for approval is appropriate under the one-time notification scheme.

94. Omnipoint requests that, for CMRS providers, the Commission replace its ''opt-in'' requirement for approval of the use of CPNI with an ''opt-out'' rule.

2. Discussion

95. We find that Omnipoint has presented no new circumstances that warrant reversal of the Commission's conclusion that the requirement of affirmative consent is consistent with Congressional intent, as well as with the principles of customer control and convenience. Nor has Omnipoint shown that wireless carriers should not be subject to the requirement of affirmative consent.

96. We conclude, however, that the Commission should not attempt to micro-manage the methods by which carriers meet their obligations to secure customer consent. As long as the carrier can show that the rules previously promulgated, which ensure that the customer has been clearly notified of his or her right to refuse consent before the CPNI is used and that the notification clearly informs the customer of the consequences of giving or refusing consent, have been complied with, the consent will be effective. However, we note that those rules are specific in the requirements for written notification, *e.g.*, that the notice must be clearly legible, use sufficiently large type, and be placed in an area so as to be readily apparent to the customer. We intend to be vigilant in enforcing these rules, as we have in enforcing the rules against slamming, which similarly provide for clear and unambiguous notice to the telephone subscriber who signs a letter of agency for authorizing a change in his or her primary interexchange carrier. This policy is also consistent with the Commission's recent action to help ensure that consumers are provided with essential information in phone bills in a clear and conspicuous manner. We will entertain complaints that carriers have not met these requirements on a case-by-case basis.

97. We clarify, at Vanguard's request, that its plan for obtaining consent at the time of the execution of initial customer agreements would be appropriate assuming Vanguard provides ''complete disclosure'' prior to seeking customer approval as required by section 64.2007(f) of the Commission's rules, and is otherwise compliant with the remainder of section 64.2007. In other words, seeking customer consent at the time of execution of initial customer agreements is not prohibited by our rules. We also concur with U S WEST's assertion, however, that carriers should be left with flexibility in implementing our rules. Accordingly, Vanguard's proposal is merely one option among many that could comply with our rules.

98. Moreover, in keeping with our desire to avoid micro-management of the notification and authorization process, we shall grant SBC, Frontier, and GTE's requests that we eliminate § 64.2007(f)(4) of the Commission's rules.

C. Preemption of State Notification Requirements

99. In the *CPNI Order,* we declined to exercise our preemption authority, although we concluded that in connection with CPNI regulation we ''may preempt state regulation of intrastate telecommunications matters where such regulation would negate the Commission's exercise of its lawful authority because regulation of the interstate aspects of the matter cannot be severed from the intrastate aspects.'' Rather, we stated that we would examine any conflicting state rules on a case-by-case basis once the states have had an opportunity to review the requirements we adopted in the *CPNI Order.* At that time we noted that state rules that are vulnerable to preemption are those that (1) permit greater carrier use of CPNI than section 222 and the Commission's rules allow, or (2) seek to impose additional limitations on carriers' use of CPNI. We also indicated, however, that state rules that would not directly conflict with the balance or goals set by Congress were not vulnerable to preemption.

100. On reconsideration, we affirm our decision to exercise our preemption authority on a case-by-case basis. While it is possible that states might impose additional CPNI conditions that could require the expenditure of resources, we conclude it would be inappropriate for the Commission to speculate in this proceeding about what such conditions might be and how much compliance might cost. We note that while deciding to address preemption requests on a case-by-case basis, we reserve the right to consider the potential costs and burdens imposed by any state requirements that would apply retroactively. For these same reasons, we also deny GTE's request that we find that ''additional CPNI use restrictions will be expeditiously preempted, particularly where other federal statutes, such as 47 U.S.C. 227(c), already address customer privacy concerns.''

101. Neither AT&T nor GTE has presented any new facts or arguments that require us to reconsider our prior ruling. Both GTE and AT&T point to the Comments of the Texas Public Utility Commission, which describe and attach a CPNI rule under consideration by the Texas Commission, as support for the need to reconsider our conclusion on preemption in the *CPNI Order.* They assert that the proposed Texas rule is in conflict with the *CPNI Order* and the Commission's rules. That Texas, or any other state, might implement CPNI rules that may be in conflict with our rules was certainly considered in the *CPNI Order.* If such an event occurs, AT&T, GTE, or any other party may request that we preempt the alleged conflicting rules. We will then consider the specific circumstances at that time.

D. Details of CPNI Notice

102. Section 64.2007 of our rules establishes the minimum form and content requirements of the notification a carrier must provide to a customer when seeking approval to use CPNI. Section 64.2007(f)(2)(ii) requires that the notification must specify, inter alia, ''the types of information that constitute CPNI'' and ''the specific entities'' that will receive it. GTE requests that the Commission clarify the rule to permit carriers to avoid exhaustively specifying all types of CPNI and all of a carrier's subsidiaries and affiliates that may receive CPNI. We decline to do so. The minimum requirements of § 64.2007 were not crafted to provide precise guidance, but rather as general notice requirements. The rule seeks to strike an appropriate balance between giving carriers flexibility to craft CPNI notices tailored to their business plans and ensuring that customers are adequately informed of their CPNI rights.

103. Thus, at a minimum, a carrier must inform a customer of the types of CPNI it intends to use. We wish to ensure that any decision by a customer to grant or deny approval is fully informed and that we reduce the potential for carrier abuse. Also, to the extent a carrier intends to disseminate a customer's CPNI, the customer has a right to know the entities that will receive the CPNI derived from his or her calling habits. Contrary to GTE's assertion, we don't believe that a customer necessarily will be confused by the name of the recipient. Importantly, the customer should have the option of restricting access to CPNI among the carrier's intended recipients of his or her personal information.

VII. Safeguards Under Section 222

A. Background

104. In the *CPNI Order,* the Commission concluded that ''all telecommunications carriers must establish effective safeguards to protect against unauthorized access to CPNI by their employees or agents, or by unaffiliated third parties.'' To this end, we required carriers to develop and implement software systems that ''flag'' customer service records in connection with CPNI, and maintain an electronic audit mechanism (''audit trail'') that tracks access to customer accounts. In addition, the *CPNI Order* stated that carriers were to: train their employees as to when it would be permissible to access customers' CPNI; establish a supervisory review process that ensures compliance with CPNI restrictions when conducting outbound marketing; and, on an annual basis, submit a certification signed by a current corporate officer attesting that he or she has personal knowledge that the carrier is in compliance with the Commission's requirements. Because the Commission anticipated that carriers would need time to conform their data systems and operations to comply with the software flags and electronic audit mechanisms required by the Order, we deferred enforcement of those rules until eight months from when the rules became effective: specifically, January 26, 1999.

105. Following the release of the *CPNI Order,* several petitioners sought reconsideration of a variety of issues, including the decision to require carriers to implement the use of flags and audit trails. Other carriers sought reconsideration of the *CPNI Order's* employee training and discipline requirement in § 64.2009(b) of the Commission's rules, as well as the supervisory review requirement in § 64.2009(d) of the Commission's rules. On September 24, 1998, in response to concerns raised by a number of parties, the Commission ruled in the *Stay Order* that it would not seek enforcement actions against carriers regarding compliance with the CPNI software flagging and audit trail requirements as set forth in 47 CFR 64.2009(a) and (c) until six months after the release date of this order on reconsideration. We concluded that it serves the public interest to extend the deadline for the initiation of enforcement of the software flagging and audit trail rules so that the Commission could ''consider recent proposals to tailor our requirements more narrowly and to reduce burdens on the industry while serving the purposes of the CPNI rules.''

106. On November 9, 1998, PCIA filed a petition for reconsideration of the *Stay Order* requesting that the Commission retract the additional requirement for deployment of systems pending the Commission's reconsideration of the *CPNI Order.* We deny PCIA's petition, however, as we have granted, in part, the petitions for reconsideration with respect to the flagging and audit trail requirements. Thus, although new systems implemented prior to the

expiration of the stay period will be required to comply with the new rules promulgated in this order, we believe the new rules are significantly less burdensome. We have considered the potential impact of our rules in this area on carriers' year 2000 (Y2K) remedial efforts and their plans to stabilize their networks over the Y2K conversion. We expect, however, that the increased flexibility, reduction in compliance burden and additional time for implementation that we grant here will greatly reduce the risk of such impact. Thus, and in light of the facts before us, we believe that our rules will have no significant detrimental effect on carriers' Y2K efforts. We conclude that it is in the public interest to extend the stay period an additional two months so as not to impede those efforts for carriers that chose to implement electronic safeguards under the modified rules. Accordingly, the Commission will not seek enforcement actions against carriers regarding compliance with sections 64.2009(a) and (c) of the Commission's rules until eight months after the release date of this order on reconsideration.

107. An industry coalition (Coalition) comprised of a combination of thirty-one industry representatives has proposed specific amendments to §§ 64.2009(a), 64.2009(c), and 64.2009(e) of the Commission's rules (Coalition Proposal). After consideration of this proposal and other comments in the record, we adopt modifications to our flagging and audit trail requirements.

B. Notice

108. In the *NPRM,* we tentatively concluded that ''all telecommunications carriers must establish effective safeguards to protect against unauthorized access to CPNI by their employees or agents, or by unaffiliated third parties.'' We further noted that we previously required AT&T, the BOCs, and GTE to implement computerized safeguards and manual file indicators to prevent unauthorized access to CPNI, and sought comment on whether such safeguards should continue to apply to those carriers. The *NPRM* also tentatively concluded that we should not specify safeguard requirements for other carriers, but sought comment on the issue.

109. We reject CompTel's assertion that the Commission failed to give adequate notice of the ''systems modifications'' announced in the *CPNI Order* because, in fact, the *NPRM* stated that the Commission might require carriers other than AT&T, the BOCs, and GTE to implement computerized safeguards and manual file indicators, and solicited comment on the issue. As we modify the flagging and audit trail rules on reconsideration to allow carriers to institute non-computerized systems, we grant CompTel's Petition in this regard.

110. We also reject NTCA's argument that our description of the projected reporting, record-keeping, and other compliance requirements of the rule we proposed in the NPRM was inaccurate. As we described, the NPRM tentatively concluded that we would *not* require carriers other than AT&T, the BOCs, and GTE to implement specified safeguard requirements as those carriers had been required to under *Computer III.* Thus, the NPRM's Initial Regulatory Flexibility Analysis correctly stated that there were no projected reporting, record-keeping, or other compliance requirements for small business entities as a result of the NPRM.

C. Evidence of Cost of Compliance

111. When we established the flagging and audit trail requirements in the *CPNI Order,* the evidence before us was that carriers could, with relative ease, modify their systems to accommodate these requirements. Based upon many of the petitions filed on reconsideration, however, it does not appear that all of the relevant facts were before the Commission at that time. Numerous petitioners have now presented evidence that the safeguards we adopted would be costly to implement.

D. The Flagging Requirement

112. Upon reconsideration, based upon the new evidence before us, we agree with the petitioners that we should modify the flagging requirement promulgated in the *CPNI Order* for all carriers. The goal of the CPNI flagging rule is to ensure that carriers are aware of the status of, and observe, a customer's CPNI approval status prior to any use of that customer's CPNI. The Coalition proposes that we modify our rule to require carriers to train their marketing personnel to determine a customer's CPNI status prior to using that customer's CPNI for ''out of category'' marketing, and to make customer approval status available to such personnel in a readily accessible and easily understandable format. As is only now evident from the new evidence presented on reconsideration, implementation of the flagging rules promulgated in the *CPNI Order* will require significant expenditures of monetary and personnel resources for most carriers, regardless of size. Although we agree in principle that the Coalition's proposal will achieve the goals of the flagging requirements at a substantially reduced cost, we conclude that the Coalition's proposal can be modified to even simpler, less regulatory terms. We find that the carriers are in a better position than the Commission to create individual systems which ensure that their employees check each customer's CPNI approval status prior to any use of that customer's CPNI for out of category marketing. Accordingly, we amend section 64.2009(a) of our rules to state that telecommunications carriers must implement a system by which the status of a customer's CPNI approval can be clearly established prior to the use of CPNI. This modification will permit all carriers to develop and implement a system that is suitable to, among other things, its unique size, capital resources, culture, and technological capabilities.

E. The Audit Trail Requirement

113. We also agree with the petitioners, based upon the new evidence before us, that we should modify the *CPNI Order's* electronic audit trail requirement. This requirement was broadly intended to track access to a customer's CPNI account, recording whenever customer records are opened, by whom, and for what purpose. As AT&T points out, the *CPNI Order's* electronic audit trail requirement would generate ''massive'' data storage requirements at great cost. As it is already incumbent upon all carriers to ensure that CPNI is not misused and that our rules regarding the use of CPNI are not violated we conclude that, on balance, such a potentially costly and burdensome rule does not justify its benefit. As an alternative to the *CPNI Order's* electronic audit trail requirement, the Coalition has proposed that we require the creation of such a record, but only with respect to ''marketing campaigns.'' We find that the Coalition proposal is too narrow because, as MCI noted in an *ex parte* meeting with the Common Carrier Bureau, many carriers distinguish between ''sales'' and ''marketing.'' We determine that carriers must maintain a record, electronically or in some other manner, of their sales and marketing campaigns that use CPNI. The record must include a description of each campaign, the specific CPNI that was used in the campaign, the date and purpose of the campaign, and what products or services were offered as part of the campaign. We will also require carriers to retain the record for a minimum of one year. We amend section 64.2009(c) accordingly.

F. The Corporate Officer Certification

114. The Coalition also requests that we amend the Officer Certification rule to eliminate the requirement that the corporate officer signing the certification have personal knowledge that the carrier is in compliance with the Commission's CPNI rules. This we decline to do. Our revisions of the flagging and audit trail requirements in this order will allow telecommunications carriers more flexibility in determining how they will ensure their compliance with our CPNI rules. This flexibility puts the responsibility squarely on the carriers to ensure their compliance. This flexibility, and its concurrent responsibility, requires that some officer of the carrier have personal knowledge that the scheme designed by the carrier is adequate and complies with our CPNI rules. Because neither the petitioners nor the Coalition have persuaded us that personal knowledge on the part of an officer is unnecessary, we will not omit that requirement from our rule. We will, however, amend the rule to omit the word ''corporate'' because, as some parties explain, not all carriers are organized as corporations.

115. We will also amend § 64.2009(e) to require that telecommunications carriers have an officer, as an agent of the carrier, sign a compliance certificate on an annual basis stating that the operating procedure established by the carrier *is or is not* in compliance with the rules in this subpart. The carrier must provide a statement accompanying the certificate detailing how the carrier's operating procedure is and/or is not in compliance.

G. Other Safeguard Provisions

116. Parties also seek reconsideration of other safeguard provisions. In light of the important role these rules play in safeguarding the proper use of CPNI, we are not persuaded that these rules are so burdensome that they warrant modification. Moreover, as we have taken steps on reconsideration to allow carriers to decide for themselves how to implement the flagging and audit trail rules, the rules are now even less burdensome. It is, in fact, the continued application of the employees training and discipline rules, and the officer certification requirement, that permits us to make the substantial modifications of the flagging and audit trail requirements on reconsideration. Thus, we conclude the remaining requirements in section 64.2009 are reasonable as presently written.

H. Petitions for Forbearance

117. We deny both as moot NTCA and PCIA's petitions for forbearance from enforcement of the audit trail and flagging rules. Section 10 of the Act requires the Commission to forbear from regulation when: (1) Enforcement is not necessary to ensure that the carrier's charges and practices are just and reasonable; (2) enforcement is not necessary for the protection of consumers; and (3) forbearance is consistent with the public interest. Both PCIA and NTCA premise their forbearance arguments upon the fact that the flagging and audit trail requirements, as detailed in the *CPNI Order*, require the implementation of electronic safeguards. Based upon the new evidence the parties presented on reconsideration, we agree with both NTCA and PCIA that the rules we promulgated in the *CPNI Order* are unduly burdensome. We deny these forbearance petitions, however, because we conclude that the revised flagging and audit trail requirements resolve NTCA and PCIA's criticisms of the former rules and the basis for their forbearance requests. Under our new rules carriers, including NTCA and PCIA members, may establish non-computerized systems of their own design to comply with our requirements.

I. Small and Rural Carriers

118. We recognize, in light of the new evidence presented to the Commission, that the flagging and audit trail requirements promulgated in the *CPNI Order* might have a disparate impact on rural and small carriers. Our modification of the flagging and audit trail requirements in this order, however, effectively moots the requests we received from the parties seeking special treatment for small and rural carriers with respect to these requirements. In particular, under the amended rules, carriers are not required to maintain flagging and audit capabilities in electronic format. Rather, the amended rules leave it to the carriers' discretion to determine what sort of system is best for their circumstances. Thus, carriers whose records are not presently maintained in electronic form are not required to implement electronic systems if they do not wish to do so. We deny, therefore, the Independent Alliance's petition to exempt small and rural carriers from the provisions of sections 64.2009(a) and (c) because we have amended our rules to accommodate, in part, the concerns of small and rural carriers. Likewise, we deny NTCA's request that rural telecommunications companies should be eligible for a blanket waiver of the flagging and audit trail provisions, and TDS's request for reconsideration of the flagging and tagging rules for small and mid-sized carriers, for the same reason. Finally, on the same basis, we reject ALLTEL's request that we reconsider the application of the ''enforcement time frames and other requirements to rural and small carriers.''

J. Adequate Cost Recovery

119. We deny TDS's request that the Commission provide a mechanism, in the form of a ''nationwide averaged [and] clearly identified flat charge on all customers,'' to recover the costs that carriers will incur complying with section 222, the *CPNI Order*, and the Commission's rules. As we have now amended our rules to allow carriers the freedom to implement these safeguards in a more effective and flexible manner, we believe that carrier costs will be significantly reduced from the costs estimated by carriers subsequent to the *CPNI Order*. Accordingly, we reject TDS's request for a separate cost recovery mechanism at this time.

K. Enforcement of CPNI Obligations

120. In this Order, we have amended our rules to reflect a deregulatory approach which leaves many of the specific details of compliance to the carriers. However, we intend to enforce the rules, as amended, zealously. We expect carriers to protect the confidentiality of the CPNI in their possession in accordance with our rules. Carriers will be subject to penalties for improper use of CPNI. Moreover, failure to develop and implement a compliance plan to safeguard CPNI consistent with our rules will form a separate basis for liability. We also note that we will address, in a separate order, the enforcement and compliance issues raised in response to the *FNPRM*.

VIII. Section 222 and Other Act Provisions

A. Section 222 and Section 272

1. Background

121. Section 272(c)(1) states that, ''[i]n its dealings with its [section 272 affiliates], a Bell operating company . . . may not discriminate between the company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards.'' The Commission concluded in the *Non-Accounting Safeguards Order* that: (1) The term ''information'' in section 272(c)(1) includes CPNI; and (2) the BOCs must comply with the

requirements of both sections 222 and 272(c)(1). The Commission, however, declined to address the parties' other arguments regarding the interplay between section 272(c)(1) and section 222 to avoid prejudging issues that would be addressed in the *CPNI Order*. The Commission also declined to address the parties' arguments regarding the interplay between section 222 and section 272(g), which permits certain joint marketing between a BOC and its section 272 affiliate. The Commission emphasized, however, that, if a BOC markets or sells the services of its section 272 affiliate pursuant to section 272(g), it must comply with the statutory requirements of section 222 and any rules promulgated thereunder.

122. In the *CPNI Order* the Commission overruled the *Non-Accounting Safeguards Order*, in part, concluding that the most reasonable interpretation of the interplay between sections 222 and 272 is that the latter does not impose any additional CPNI requirements on BOCs' sharing of CPNI with their section 272 affiliates when they share information with their section 272 affiliates according to the requirements of section 222. The Commission reached this conclusion only after recognizing an apparent conflict between sections 222 and 272. We noted in the *CPNI Order* that, on the one hand, certain parties argued that under the principle of statutory construction the ''specific governs the general,'' and that section 222 specifically governs the use and protection of CPNI, but section 272 only refers to ''information'' generally. As such, they claimed that section 222 should control section 272. On the other hand, under the same principle of construction, other parties argued that section 272 specifically governs the BOCs' sharing of information with affiliates, whereas section 222 generally relates to all carriers. Therefore, they asserted, section 272 should control section 222. Because either interpretation is plausible, it was left to the Commission to resolve the tension between these provisions, and to formulate the interpretation that, in the Commission's judgment, best furthers the policies of both provisions and the statutory design. We determine that interpreting section 272 to impose no additional obligations on the BOCs when they share CPNI with their section 272 affiliates according to the requirements of section 222 most reasonably reconciles the goals of these two principles.

2. Discussion

123. We affirm our conclusion in the *CPNI Order* that the most reasonable interpretation of the interplay of sections 222 and 272 is that section 272 does not impose any additional obligations on the BOCs when they share CPNI with their section 272 affiliates. For the same reasons described in the *CPNI Order*, however, we conclude that our prior interpretation of the relationship between sections 222 and 272 is correct.

124. At the outset, we reject MCI's argument that there was not adequate notice that the Commission might reverse its conclusion in the *Non-Accounting Safeguards Order* relating to CPNI.

125. We further disagree with MCI's claim that the Commission's ''approach'' is flawed. We affirm our previous conclusion based upon our prior reasoning.

126. We also reject MCI and TRA's argument that the ''except as required by law'' clause in section 222(c)(1) encompasses, at least in part, section 272(c)(1). We conclude, for the same reasons as those we previously described in the *CPNI Order*, that the ''except as required by law'' clause does not encompass section 272.

127. We affirm the *CPNI Order*'s conclusion that the term ''information'' in section 272(c)(1) does not include CPNI despite CompTel and Intermedia's assertion that such an interpretation is contrary to the plain meaning of the Act and should be reconsidered.

128. While the legislative history is silent about the meaning of ''information'' in section 272(c)(1), the structure of the Act indicates strongly that the provision is susceptible to differing meanings. Indeed, as the courts have cautioned, the Commission is bound to move beyond dictionary meanings of terms and to consider other possible interpretations, assess statutory objectives, weigh congressional policy, and apply our expertise in telecommunications in determining the meaning of provisions. In this instance, we believe that the structure of the Act belies petitioners' contention that the term ''information'' has a plain meaning that encompasses CPNI. In enacting section 222, Congress carved out very specific restrictions governing consumer privacy in CPNI and consolidated those restrictions in a single, comprehensive provision. We believe that the specific requirements governing CPNI use are contained in that section and we disfavor, accordingly, an interpretation of section 272 that would create constraints for CPNI beyond those embodied in the specific provision delineating those constraints. As a practical matter, the interpretation proffered by petitioners would bar BOCs from sharing CPNI with their affiliates: the burden imposed by the nondiscrimination requirements would, in this context, pose a potentially insurmountable burden because a BOC soliciting approval to share CPNI with its affiliate would have to solicit approval for countless other carriers as well, known or unknown. We do not believe that is what Congress envisioned when it enacted sections 222 and 272. Rather, as we concluded in the *CPNI Order*, we find it a more reasonable interpretation of the statute to conclude that section 222 contemplates a sharing of CPNI among all affiliates (whether BOCs or others), consistent with customer expectations that related entities will share information so as to offer services best tailored to customers' needs. For these reasons, we find that the ''plain meaning'' argument raised by Comptel and Intermedia is not persuasive, and further that their meaning is not the one Congress most likely intended. Therefore, we affirm our previous conclusion.

129. In addition, we are not persuaded by CompTel's assertion that there is no indication that section 222 was intended to trump section 272 because the Commission previously recognized, in the *First Report and Order*, that section 222's obligations are not exclusive. Because Congress unambiguously prohibited the use of such CPNI in section 275(d), we concluded that the specific prohibition in section 275(d) controls the general CPNI rules described in section 222. This stands in stark contrast to the difficult task of reconciling sections 222 and 272.

130. Moreover, we do not agree with WorldCom's assertion that the Commission ignored section 272(b)(1). Thus, we deny reconsideration on this basis as WorldCom has not presented any new arguments or facts we did not already consider.

131. Finally, several parties also argue that our interpretation of the interplay of sections 222 and 272 gives BOC affiliates an unfair competitive advantage over other competitors. These parties raise no new arguments or facts on reconsideration of this point that we did not already consider. We previously identified in detail specific mechanisms in section 222 that address such competitive concerns. We therefore deny these parties' requests for reconsideration of this conclusion.

B. Disclosure of Non-CPNI Information Pursuant to Section 272

132. The Commission noted in a footnote in the *CPNI Order* that BOC non-discrimination obligations under section 272 would apply to the sharing of all other information and services with their section 272 affiliates. The Common Carrier Bureau further concluded in the *Clarification Order* that a customer's name, address, and telephone number are not CPNI. The Bureau reasoned that ''[i]f the definition of CPNI included a customer's name, address, and telephone number, a carrier would be prohibited from using its business records to contact any of its customers to market any new service that falls outside the scope of the existing service relationship with those customers.

133. We agree with the Common Carrier Bureau's clarification and adopt its reasoning and conclusion as our own. Accordingly, we grant MCI's request that we clarify that a customer's name, address, and telephone number are ''information'' for purposes of section 272(c)(1), and if a BOC makes such information available to its affiliate, then it must make that information available to non-affiliated entities.

134. MCI also argues that the Commission should find that a customer's PIC choice and PIC-freeze status are not CPNI as defined in section 222(f)(1). We are not persuaded by MCI's statutory interpretation. We conclude that a customer's PIC choice falls squarely within the definition of CPNI set out in both sections 222(f)(1)(A) and (B), and that PIC-freeze information meets the requirements of section 222(f)(1)(A). Finally, we agree with GTE that this result is consistent with the privacy goals set out by Congress in section 222.

C. Section 222 and Section 254

135. CenturyTel also argues that restricting the use of CPNI in marketing enhanced services and CPE to existing customers in rural exchanges is inconsistent with Universal Service provisions of the Act.

136. We disagree with the arguments made by CenturyTel and NTCA. As stated in Section V.A of this Order, we affirm the ''total service approach'' for all carriers. We find no reason to impose different notification requirements on large and small carriers. As we stated in the *CPNI Order*, concerns regarding customer privacy are the same irrespective of the carrier's size or identity. Further to the extent that CenturyTel and NTCA are requesting to use CPNI, without customer approval, to market CPE and certain information services, those requests have been granted. We also disagree with CenturyTel and NTCA's argument that section 254 requires the use of CPNI to allow rural carriers to implement Congress' Universal Service standards. Section 254 envisions that rural carriers would introduce and make available new technology to all of its customers. The CPNI rules in no way discourage rural carriers from doing that. In fact, one could argue that some of the CPNI rules require a carrier to make all of its customers aware of such new technology rather than using CPNI to pick and choose which customers to market the new technology to. The basis of CenturyTel and NTCA's arguments, however, is that they do not want to market the new technology to all of its customers. They want to make it available only to certain customers that they select by using their customers' CPNI. We fail to see how section 254 requires this outcome.

D. Application of Nondiscrimination Rules Under Sections 201(b) and 202(a)

137. We reject MCI's argument that the nondiscrimination requirement described in section 272 should be applied to all ILECs through the requirements of sections 201(b) and 202(a).

138. We agree with GTE that there is no justification to conclude, as a matter of statutory construction, that the broad non-discrimination requirements of these sections impose a specific disclosure obligation on ILEC use of CPNI. In any case, the same privacy concerns we identified in our discussion of the relationship between sections 222 and 272 apply here equally. For instance, requiring the disclosure of CPNI to other companies to maintain competitive neutrality would defeat, rather than protect, customers' privacy expectations and control over their own CPNI. We conclude that the specific consumer privacy and consumer choice protections established in section 222 supersede the general protections identified in sections 201(b) and 202(a). Thus, we are not persuaded that section 201(b) or section 202(a) require the result MCI seeks. Accordingly, we reject MCI's request.

IX. Other Issues

A. Status of Customer Rewards Program

139. Section 64.2005(b) of the Commission's Rules prohibits a telecommunications carrier from using, disclosing, or permitting access to CPNI to market to a customer, without customer approval, service offerings that are within a category of service to which the customer does *not* already subscribe.

140. Omnipoint and Vanguard contend that when a carrier provides free rewards, such as free equipment, for the purpose of retaining its accounts, the prohibition in section 64.2005(b) should not apply because (1) the customer subscribes to the service for which the reward is provided; and (2) the reward is free, and therefore is not ''marketed.'' Omnipoint and Vanguard request clarification because they claim that carriers are more likely to offer rewards if they are able to target them to high-volume or long-term customers, and if carriers do not need to seek customer approval. No party has objected to this proposal.

141. We agree with Omnipoint and Vanguard that, where a carrier uses CPNI to provide free rewards to its customer, such use of CPNI is within the scope of the carrier-customer relationship. As such, the use of the CPNI is limited to the existing service relationship between the carrier and the customer. Therefore, although the provision of free rewards is a marketing activity, it does not violate the Act or our rules, provided the telecommunications service being marketed is the service currently subscribed to by the customer.

B. Non-telecommunications Services Listed on Telephone Bill

142. CPNI is defined in section 222(f)(1)(B) of the Act as including ''information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information.'' However, section 222(c)(1) prohibits a carrier's use of CPNI only where it receives the CPNI ''by virtue of its provision of a telecommunications service.''

143. In the Common Carrier Bureau's *Clarification Order*, the Bureau said that ''customer information derived from the provision of any non-telecommunications service, such as CPE or information services * * * may be used to provide or market any telecommunications service * * *'' Omnipoint asks the Commission to clarify that section 222 does not prohibit the use of customer information derived from non-telecommunications services bundled with telecommunications services merely because charges for those services appeared on a customer's telephone bill.

144. Section 222(c)(1) prohibits the use of CPNI only where it is derived

from the provision of a telecommunications service. Consequently, we find that information that is not received by a carrier in connection with its provision of telecommunications service can be used by the carrier without customer approval, regardless of whether such information is contained in a bill generated by the carrier. Therefore, consistent with the *Clarification Order*, customer information derived from information services that are held not to be telecommunications services may be used, even if the telephone bill covers charges for such information services.

C. Provision of Calling Card as ''Provision'' of Service

145. LECs often offer so-called ''post-paid'' calling cards that enable customers to complete long distance calls over a particular interexchange carrier's network when the customer is away from home. Such cards enable a customer to have the calls billed subsequently on the customer's local bill issued by the LEC. MCI asks the Commission to clarify that LECs may not use CPNI garnered in such circumstances to market services that the LEC offers absent permission from the customer.

146. We grant MCI's request for clarification. In the traditional LEC post-paid calling card situation, the LEC serves merely as a billing and collection agent on behalf of the interexchange carrier, much as the LEC does when a customer places long distance calls from home through the customer's pre-subscribed interexchange carrier (IXC). In both instances, the customer has established a customer-carrier relationship for the provision of interexchange services with the IXC that carried the customer's call over its network. The LEC, on the other hand, is standing in the place of the IXC only for billing and collection purposes, a service which the IXC could have chosen to provide itself. Where a LEC acts as a billing and collection agent, it may not use CPNI without the customer's permission under the total services approach.

D. Use of CPNI To Prevent Fraud

147. Section 222(d)(2) of the Act permits the use of CPNI to ''protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to services * * *'' Section 64.2005 of the Commission's rules provides that a telecommunications carrier may use, disclose, or permit access to CPNI, without customer approval, for a number of purposes, but does not mention the use of CPNI in connection with fraud prevention programs.

148. Comcast requests that the Commission clarify its rules to specify that (1) carriers are authorized to use CPNI in connection with fraud prevention programs; and (2) such use is permissible even after a customer has terminated service from the carrier making such use of the customer's CPNI.

149. We agree that Section 222(d)(2) on its face permits the use of CPNI in connection with fraud prevention programs, and does not limit such use of CPNI that is generated during the customer's period of service to any period of time. Since our rules do not cover the use of CPNI for fraud prevention programs, we will amend our rules to do so, in order to eliminate the possibility of misinterpretation.

E. Definition of ''Subscribed'' in Section 222(f)(1)(A)

150. We grant MCI's request for clarification of the meaning of the phrase ''service subscribed to by any other customer'' in section 222(f)(1)(A).

F. CPNI ''Laundering''

151. MCI requests clarification that ''the status of information as CPNI or carrier proprietary information [under section 222] is not lost or altered if [a] carrier discloses or transmits such information to an affiliated or unaffiliated entity, whether or not that entity transfers such information to other parties or back to the original carrier.''

152. We agree that as the stewards of CPNI and carrier proprietary information carriers must take steps to safeguard such information. Moreover, we find that implicit in section 222 is a rebuttable presumption that information that fits the definition of CPNI contained in section 222(f)(1) is in fact CPNI. We decline, however, to speak to MCI's other clarification requests as they regard issues relating to carrier proprietary information in section 222(b) and enforcement mechanisms to ensure carrier compliance with both sections 222(a) and (b). As *FNPRM* in this docket seeks comment on those specific issues, we would not want to prejudice resolution of those issues in this order.

G. Acts of Agents of Wireless Providers

153. Vanguard argues that sales agents of CMRS providers are not subject to Commission rules, and that CMRS providers should not be held responsible for the use of CPNI independently obtained by agents because it would be difficult or impossible for CMRS providers to enforce these obligations on agents.

154. We find that telecommunications service providers will be responsible for the actions of their agents to comply with our CPNI rules to the extent that telecommunications service providers share CPNI with their agents. Moreover, telecommunications service providers will be responsible for the actions of agents with respect to the use of CPNI acquired by their agents. It is well established that principals are responsible for the actions of their agents. In the absence of such a rule, the important consumer protections enacted by Congress in section 222 may be vitiated by the actions of agents.

155. We believe that telecommunications service providers can meet these requirements through the private contract arrangements they have with their agents. Carriers would normally have negotiating leverage to enforce this requirement in the case of agents who serve more than one carrier, since all carriers would be required to enforce the same rules. To the extent that it may be shown that some carriers would not be able to enforce these requirements, the Commission will address the exceptions on a case-by-case basis.

H. Information Known to Employees

156. Section 222(f)(1)(A) defines CPNI, in part, as including information ''that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship.'' We reject Comcast's argument that, based upon this definition, CPNI should not include ''institutional knowledge'' of the attributes of a particular customer's account gained by a carrier's employee from his or her work on the customer's account over the years if the employee does not actually access the customer's record, and U S WEST's argument that so long as an employee does not use a customer's record containing that customer's CPNI, the employee has not violated section 222. We are not persuaded that section 222(f)(1)(A) implies an exception based on whether the information acquired as part of the carrier-customer relationship is reduced to writing or is kept in the memory of a carrier representative. Thus, if a customer tells a carrier's employee information that otherwise fits the definition of CPNI provided in section 222(f)(1)(A), then that information is CPNI, no matter how the information is retained by the carrier.

I. Use of CPNI Under Section 222(d)(3) During Inbound Calls

157. Several carriers request that the Commission clarify the requirements for obtaining customer approval under section 222(d)(3). This section states that ''[n]othing in [section 222] prohibits a telecommunications carrier from using, disclosing, or permitting access to customer proprietary network information obtained from its customers, either directly or indirectly through its agents . . . to provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call, if such call was initiated by the customer and the customer approves of the use of such information to provide such service.

158. We agree that the detailed notification outlined in section 64.2007(f) of our rules is not necessary prior to soliciting a customer's approval to use his or her CPNI for the duration of an inbound call. It is unduly burdensome to require carriers to comply with the rule in light of the limited coverage of section 222(d)(3). Moreover, the rule reflects a discussion in the *CPNI Order* of the content of the general notification requirements under section 222(c)(1), and not those required for section 222(d)(3). Accordingly, we clarify that section 64.2007(f) does not apply to solicitations for customer approval under section 222(d)(3).

159. We deny, however, TDS's request that we reconsider our prior conclusion that section 222(d)(3) requires an affirmative customer approval. We previously stated in the *CPNI Order* that section 222(d)(3) ''contemplates oral approval.'' We conclude that a plain reading of the statute contradicts TDS's conclusion: If Congress meant consent to be inferred from the mere fact that the customer initiated the call, it would not have required that the customer both initiate the call *and* ''approve[] of the use of such information to provide such service.'' We deny TDS's request for reconsideration for this reason and because TDS has not presented any new arguments or facts that the Commission did not consider in the *CPNI Order* with regard to this issue.

160. Finally, pursuant to GTE's request, we clarify that carriers need not maintain records of notice and approval of carrier use of CPNI during inbound calls under section 222(d)(3). Section 64.2007(e) of the Commission's rules requires that carriers maintain customer notification and approval records for one year. Notifications and approvals under section 222(c)(1) and 222(d)(3), however, are markedly different in scope. Notifications and approvals under section 222(c)(1) are valid until revoked or limited by the customer, whereas notifications and approvals for inbound calls pursuant to section 222(d)(3) are only valid for the duration of each call. Therefore, unlike the retention of records of notifications and approvals under section 222(c)(1), which we previously concluded would facilitate the disposition of individual complaint proceedings if the sufficiency of a customer's notification or approval is challenged at some later time, requiring the retention of records of section 222(d)(3) notifications and approvals would provide little evidentiary value because the notification and customer's authorization to use CPNI automatically evaporate upon completion of the call. We do not find any advantage to requiring carriers to retain such records for purposes of section 222(d)(3). As such, we conclude that such a requirement would place an unnecessary burden on carriers.

X. Procedural Issues

161. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *FNPRM*. The Commission sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

I. Need for and Objectives of This Order on Reconsideration and the Rules Adopted Herein

162. In the Order on Reconsideration, the Commission reconsiders the rules promulgated in the *CPNI Order* in light of an expanded record to better balance customer privacy concerns with those of customer convenience with the effect of minimizing the impact of our requirements on all carriers, including small and rural carriers. We have amended our rules relating to flagging and audit trails for all carriers, which will have a beneficial impact on small carriers. Additionally, we modify our rules to permit all carriers to use CPNI to market CPE to their customers, without express approval. We also find that customers give implied consent to use CPNI to CMRS carriers for the purpose of marketing all information services, but only give implied consent to wireline carriers for certain information services. We further modify our rules to allow carriers to use CPNI to regain customers who have switched to another carrier.

II. Summary of Significant Issues Raised by Public Comments in Response to the FRFA

163. As discussed in Section V, a number of small carriers or their advocates present evidence that the safeguard requirements of the CPNI rules are particularly burdensome for small and rural carriers. We recognize, in light of the new evidence presented to the Commission, that the flagging and audit trail requirements promulgated in the *CPNI Order* might have a disparate impact on rural and small carriers. Our modification of the flagging and audit trail requirements in this order, however, effectively moots the requests we received from the parties seeking special treatment for small and rural carriers with respect to these requirements. Moreover, the restrictions lifted on the marketing of CPE and information services will lessen the impact of compliance with our rules for small and rural carriers, generally, and enable these carriers to more efficiently use their marketing resources.

III. Description and Estimates of the Number of Small Entities Affected by the First Report and Order

164. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the actions taken in this *Order on Reconsideration*. The RFA generally defines the term ''small entity '' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss generally the total number of small telephone companies falling within both of those SIC categories. Then, we discuss the number of small businesses within the two subcategories, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

165. Although affected ILECs may have no more than 1,500 employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they either are dominant in their field of operations or are not independently owned and operated, and are therefore by definition not ''small entities'' or ''small business concerns'' under the RFA. Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term ''small ILECs'' to refer to any ILECs that arguably might be defined by SBA as ''small business concerns.''

166. *Total number of telephone companies affected.* The United States Bureau of the Census (the Census Bureau) reports that at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are either small entities or small incumbent LECs that may be affected by this order.

167. *Wireline carriers and service providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small entity telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by this order.

168. *Local exchange carriers.* Neither the Commission nor the SBA has developed a definition of small providers of local exchange services. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,371 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, or are dominant we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,371 small providers of local exchange service are small entities or small ILECs that may be affected by this order.

169. *Interexchange carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with TRS. According to our most recent data, 143 companies reported that they were engaged in the provision of interexchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 143 small entity IXCs that may be affected by this order.

170. *Competitive access providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 109 companies reported that they were engaged in the provision of competitive access services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 109 small entity CAPs that may be affected by this order.

171. *Operator service providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of operator service providers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 27 companies reported that they were engaged in the provision of operator services. Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 27 small entity operator service providers that may be affected by this order.

172. *Pay telephone operators.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under the SBA's rules is for telephone communications companies

other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 441 companies reported that they were engaged in the provision of pay telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 441 small entity pay telephone operators that may be affected by this order.

173. *Wireless carriers.* The SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by this order.

174. *Cellular service carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 804 companies reported that they were engaged in the provision of cellular services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 804 small entity cellular service carriers that may be affected by this order.

175. *Mobile service carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 172 companies reported that they were engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under the SBA's definition. Consequently, we estimate that there are fewer than 172 small entity mobile service carriers that may be affected by this order.

176. *Broadband PCS licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has defined small entity in the auctions for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenue of not more than $15 million for the preceding three calendar years. These regulations defining small entity in the context of broadband PCS auctions have been approved by the SBA. No small business within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small businesses won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully; therefore, there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning bidders and the 93 qualifying bidders in the D, E, and F Blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

177. *Narrowband PCS licensees.* The Commission does not know how many narrowband PCS licenses will be granted or auctioned, as it has not yet determined the size or number of such licenses. Two auctions of narrowband PCS licenses have been conducted for a total of 41 licenses, out of which 11 were obtained by small businesses owned by members of minority groups and/or women. Small businesses were defined as those with average gross revenues for the prior three fiscal years of $40 million or less. For purposes of this FRFA, the Commission is utilizing the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. Not all of the narrowband PCS licenses have yet been awarded. There is therefore no basis to determine the number of licenses that will be awarded to small entities in future auctions. Given the facts that nearly all radiotelephone companies have fewer than 1,000 or fewer employees and that no reliable estimate of the number of prospective narrowband PCS licensees can be made, we assume, for purposes of the evaluations and conclusions in this FRFA, that all the remaining narrowband PCS licenses will be awarded to small entities.

178. *SMR licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small entity'' in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The rules adopted in this order may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We assume, for purposes of this FRFA, that all of the extended implementation

authorizations may be held by small entities, which may be affected by this order.

179. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this order includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Thus, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. Moreover, there is no basis on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this FRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by this order.

180. *Resellers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under the SBA's rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 339 companies reported that they were engaged in the resale of telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by this order.

IV. Steps Taken To Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered

181. We recognize, in light of the new evidence presented to the Commission, that the flagging and audit trail requirements promulgated in the *CPNI Order* might have a disparate impact on rural and small carriers. We have amended the flagging and audit trail requirements, and as more fully discussed in Section V, the amended rules leave it to the carrier's discretion to determine what sort of system is best for their circumstances. Thus, carriers whose records are not presently maintained in electronic form are not required to implement electronic systems if they do not wish to do so. We believe this modification of our rules will significantly minimize any adverse economic impact on small entities that our original rules may have had.

V. Report to Congress

182. The Commission shall send a copy of this Supplemental Final Regulatory Flexibility Analysis, along with this Order on Reconsideration, in a report to Congress pursuant to the Small business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this SFRFA will also be published in the **Federal Register**.

B. Supplemental Final Paperwork Reduction Analysis

183. The *CPNI Order* from which this Order on Reconsideration issues proposed changes to the Commission's information collection requirements. As required by the Paperwork Reduction Act of 1995, Public Law 104–13, the *CPNI Order* invited the general public and the Office of Management and Budget (OMB) to comment on the proposed changes. On June 23, 1998, OMB approved all of the proposed changes to our information collection requirements in accordance with the PRA.

184. This Order on Reconsideration amends our rules to merely state that telecommunications carriers must implement a system by which the status of a customer's CPNI approval can be clearly established prior to the use of CPNI, and must maintain an audit mechanism that tracks CPNI usage. We have removed the requirements of § 64.2009 (a) and (c) that carriers must develop and implement software that flags a customer's CPNI approval status and must maintain an electronic audit mechanism that tracks access to customer accounts. These amendments are new collections of information within the meaning of the PRA. Implementation of these requirements is subject to approval by the OMB, as prescribed by the PRA.

XI. Ordering Clauses

185. Accordingly, *it is ordered* that, pursuant to Sections 1, 4(i), 10, 222 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 160, 222 and 303(r), the Order is hereby adopted. The rules established by the Order contain information collection requirements that have not yet been approved by the Office of Management and budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these rules. *It is further ordered* that, pursuant to sections 1, 4(i) and 222 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and 222, the Petitions for Reconsideration, as listed in the Appendix to the Order, are granted to the extent indicated herein and otherwise denied.

186. *It is further ordered* that, pursuant to sections 1, 4(i), 10 and 222 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 160 and 222, the Petitions for Forbearance, as listed in Appendix A hereto, are denied.

187. *It is further ordered* that 64.2005(b)(3) of part 64 of the Commission's rules, 47 CFR 64.2005(b)(3), is removed.

188. *It is further ordered* that 64.2007(f)(4) of part 64 of the Commission's rules, 47 CFR 64.2007(f)(4), is removed.

189. *It is further ordered*, pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), that we shall not seek enforcement against carriers regarding compliance with 64.2009(a) and (c) of part 64 of the Commission's rules, 47 CFR 64.2009(a) and (c), as amended herein, until eight months after the release of this Order.

190. *It is further ordered* that part 64 of the Commission's rules, 47 CFR is amended. These rules contain information collection requirements that have not yet been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date of those sections. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Appendix—Petition for Forbearance

Note: This Appendix will not appear in the Code of Federal Regulations.

Petitions for Reconsideration Filed May 26, 1998

ALLTEL Communications, Inc. (ALLTEL)
AT&T Corp.
BellSouth Corporation
Comcast Cellular Communications, Inc.
Competitive Telecommunications Association (CompTel)
Independent Alliance (Alliance)
LCI International Telecom Corp.
MCI Telecommunications Corporation
Metrocall, Inc. (Metrocall)
Omnipoint Communications, Inc
Paging Network, Inc. (PageNet)
Personal Communications Industry Association (PCIA)
RAM Technologies, Inc. (RAM)
SBC Communications Inc.
Sprint Corporation
TDS Telecommunications Corporation
United States Telephone Association (USTA)
Vanguard Cellular Systems, Inc. (Vanguard)

Petitions for Forbearance

Personal Communications Industry Association (PCIA)

Petitions for Reconsideration/Forbearance

360° Communications Company
Ameritech
Bell Atlantic Telephone Companies (Bell Atlantic)
Cellular Telecommunications Industry Association
CommNet Cellular Inc.
GTE Service Corporation (GTE)
National Telephone Cooperative Association (NTCA)
Paging Network, Inc.
PrimeCo Personal Communications, L.P.
United States Telephone Association

Rule Changes

For the reasons discussed in the preamble, 47 CFR Part 64 is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 10, 201, 218, 226, 228, 332, unless otherwise noted.

§ 64.2005 [Amended]

2. In § 64.2005, paragraph(b)(1) is revised, paragraph (b)(3) is removed, and paragraph (d) is added to read as follows:

* * * * *

(b) * * *

(1) A wireless provider may use, disclose, or permit access to CPNI derived from its provision of CMRS, without customer approval, for the provision of CPE and information service(s). A wireline carrier may use, disclose or permit access to CPNI derived from its provision of local exchange service or interexchange service, without customer approval, for the provision of CPE and call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, and protocol conversions.

* * * * *

(d) A telecommunications carrier may use, disclose, or permit access to CPNI to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services.

§ 64.2007 [Amended]

3. In § 64.2007 remove paragraph (f)(4).

§ 64.2009 [Amended]

4. In § 64.2009, paragraphs (a), (c) and (e) are revised to read as follows:

(a) Telecommunications carriers must implement a system by which the status of a customer's CPNI approval can be clearly established prior to the use of CPNI.

* * * * *

(c) All carriers shall maintain a record, electronically or in some other manner, of their sales and marketing campaigns that use CPNI. The record must include a description of each campaign, the specific CPNI that was used in the campaign, the date and purpose of the campaign, and what products or services were offered as part of the campaign. Carriers shall retain the record for a minimum of one year.

* * * * *

(e) A telecommunications carrier must have an officer, as an agent of the carrier, sign a compliance certificate on an annual basis stating that the officer has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the rules in this subpart. The carrier must provide a statement accompanying the certificate explaining how its operating procedures ensure that it is or is not in compliance with the rules in this subpart.

* * * * *

[FR Doc. 99–25232 Filed 9–30–99; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 15, 19, and 52

[FAC 97–14; Item XVI]

Federal Acquisition Regulation; Technical Amendments; Correction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendments; Correction of Effective Date.

SUMMARY: FAC 97–14, Item XVI, Technical Amendments, which was published in the **Federal Register** on September 24, 1999, is corrected to amend the effective date of the amendment to 52.211–6. The document amended the Federal Acquisition Regulation to update references and make editorial changes.

EFFECTIVE DATE: This correction is effective September 24, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755.

Correction

In the issue of September 24, 1999, on page 51850, middle column, the effective date is corrected to read as follows:

EFFECTIVE DATE: September 24, 1999, except for sections 19.102, 52.211–6, and 52.219–18 which are effective November 23, 1999.

Dated: September 27, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–25537 Filed 9–30–99; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1002, 1003, 1007, 1011, 1012, 1014, 1017, 1018, 1019, 1021, 1034, 1039, 1100, 1101, 1103, 1104, 1105, 1113, 1133, 1139, 1150, 1151, 1152, 1177, 1180, and 1184

[STB Ex Parte No. 572 (Sub-No. 2]

Revision of Miscellaneous Regulations

AGENCY: Surface Transportation Board, Transportation.