ADDENDUM
(OF STATUTES AND REGULATIONS)

STATUTES

47 U.S.C.A. Section 222 (West Supp. 1998)

§ 222. Privacy of customer information

(a) In general

Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.

(b) Confidentiality of carrier information

A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.

(c) Confidentiality of customer proprietary network information

(1) Privacy requirements for telecommunications carriers

Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information 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.

(2) Disclosure on request by customers

A telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer.

(3) Aggregate customer information

A telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a

telecommunications service may use, disclose, or permit access to aggregate customer information other than for the purposes described in paragraph (1). A local exchange carrier may use, disclose, or permit access to aggregate customer information other than for purposes described in paragraph (1) only if it provides such aggregate information to other carriers or persons on reasonable and nondiscriminatory terms and conditions upon reasonable request therefor.

(d) Exceptions

Nothing in this section 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—

(1) to initiate, render, bill, and collect for telecommunications services;

(2) 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; or

(3) 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.

(e) Subscriber list information

Notwithstanding subsections (b), (c), and (d) of this section, a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.

(f) Definitions

As used in this section:

(1) Customer proprietary network information

The term "customer proprietary network information" means—

(A) information that relates to the quantity, technical configuration, type, destination, and amount of use of a

telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and

(B) 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.

(2) Aggregate information

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

(3) Subscriber list information

The term "subscriber list information" means any information—

(A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and

(B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

(Pub.L. 104-104, Title VII, § 702, Feb. 8, 1996, 100 Stat. 148.)

REGULATIONS

1. AUTHORITY: 47 U.S.C. 1-5, 7, 201-05, 222.

PART 22 -- PUBLIC MOBILE SERVICES

2. § 22.903 [Remove].

PART 64 -- MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

3. The table of contents for Part 64 is revised to read as follows:

* * * * *

Subpart U -- Customer Proprietary Network Information

4. § 64.702 [Amended]

In § 64.702, remove paragraph (d)(3).

5. Subpart U is added to read as follows:

Subpart U --Customer Proprietary Network Information

§ 64.2001 Basis and purpose.

(a) *Basis*. These rules are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose*. The purpose of these rules is to implement section 222 of the Communications Act of 1934, as amended, 47 U.S.C. 222.

§ 64.2003 Definitions.

Terms used in this subpart have the following meanings:

(a) *Affiliate*. An affiliate is an entity that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another entity.

(b) *Customer*. A customer of a telecommunications carrier is a person or entity to which the telecommunications carrier is currently providing service.

(c) *Customer proprietary network information (CPNI).* Customer proprietary network information (CPNI) is (1) information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the customer-carrier relationship; and (2) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier. Customer proprietary network information does not include subscriber list information.

(d) *Customer premises equipment (CPE).* Customer premises equipment (CPE) is equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

(e) *Information Service.* Information service is the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

(f) *Local exchange carrier (LEC).* A local exchange carrier (LEC) is any person that is engaged in the provision of telephone exchange service or exchange access. For purposes of this subpart, such term does not include a person insofar as such person is engaged in the provision of commercial mobile service under 47 U.S.C. 332(c).

(g) *Subscriber list information (SLI).* Subscriber list information (SLI) is any information (1) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and (2) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

(h) *Telecommunications carrier.* A telecommunications carrier is any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in 47 U.S.C. 226(a)(2)).

§ 64.2005 Use of Customer Proprietary Network Information Without Customer Approval

(a) Any telecommunications carrier may use, disclose, or permit access to CPNI for the purpose of providing or marketing service offerings among the

categories of service (*i.e.*, local, interexchange, and CMRS) already subscribed to by the customer from the same carrier, without customer approval.

(1) If a telecommunications carrier provides different categories of service, and a customer subscribes to more than one category of service offered by the carrier, the carrier is permitted to share CPNI among the carrier's affiliated entities that provide a service offering to the customer.

(2) If a telecommunications carrier provides different categories of service, but a customer does not subscribe to more than one offering by the carrier, the carrier is not permitted to share CPNI among the carrier's affiliated entities.

(b) A telecommunications carrier may not use, disclose, or permit access to CPNI to market to a customer service offerings that are within a category of service to which the customer does not already subscribe to from that carrier, unless the carrier has customer approval to do so, except as described in paragraph (c) of this section.

(1) A telecommunications carrier may not use, disclose, or permit access to CPNI derived from its provision of local service, interexchange service, or CMRS, without customer approval, for the provision of CPE and information services, including call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, and Internet access services. For example, a carrier may not use its local exchange service CPNI to identify customers for the purpose of marketing to those customers related CPE or voice mail service.

(2) A telecommunications carrier may not use, disclose or permit access to CPNI to identify or track customers that call competing service providers. For example, a local exchange carrier may not use local service CPNI to track all customers that call local service competitors.

(3) A telecommunications carrier may not use, disclose or permit access to a former customer's CPNI to regain the business of the customer who has switched to another service provider.

(c) A telecommunications carrier may use, disclose, or permit access to CPNI, without customer approval, as described in this subparagraph.

(1) a telecommunications carrier may use, disclose, or permit access to CPNI, without customer approval, in its provision of inside wiring installation, maintenance, and repair services.

(2) CMRS providers may use, disclose, or permit access to CPNI for the purpose of conducting research on the health effects of CMRS.

(3) LECs and CMRS providers may use CPNI, without customer approval, to market services formerly known as adjunct-to-basic services, such as, but not limited to, speed dialing, computer-provided directory assistance, call monitoring, call tracing, call blocking, call return, repeat dialing, call tracking, call waiting, caller I.D., call forwarding, and certain centrex features.

§64.2007 Notice and Approval Required for Use of Customer Proprietary Network Information

(a) A telecommunications carrier must obtain customer approval to use, disclose, or permit access to CPNI to market a customer service to which the customer does not already subscribe to from that carrier.

(b) A telecommunications carrier may obtain approval through written, oral or electronic methods.

(c) A telecommunications carrier relying on oral approval must bear the burden of demonstrating that such approval has been given in compliance with the Commission's rules.

(d) Approval obtained by a telecommunications carrier for the use of CPNI outside of the customer's total service relationship with the carrier must remain in effect until the customer revokes or limits such approval.

(e) A telecommunications carrier must maintain records of notification and approval, whether oral, written or electronic, for at least one year.

(f) Prior to any solicitation for customer approval, a telecommunications carrier must provide a one-time notification to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI.

(1) A telecommunications carrier may provide notification through oral or written methods.

(2) Customer notification must provide sufficient information to enable the customer to make an informed decision as to whether to permit a carrier to use, disclose or permit access to, the customer's CPNI.

(i) The notification must state that the customer has a right, and the carrier a duty, under federal law, to protect the confidentiality of CPNI.

(ii) The notification must specify the types of information that constitute CPNI and the specific entities that will receive the CPNI, describe the purposes for which CPNI will be used, and inform the customer of his or her right to disapprove those uses, and deny or withdraw access to CPNI at any time.

(iii) The notification must advise the customer of the precise steps the customer may take in order to grant or deny access to CPNI, and must clearly state that a denial of approval will not affect the provision of any services to which the customer subscribes.

(iv) The notification must be comprehensible and not be misleading.

(v) If written notification is provided, the notice must be clearly legible, use sufficiently large type, and be placed in an area so as to be readily apparent to a customer.

(vi) If any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.

(vii) A carrier may state in the notification that the customer's approval to use CPNI may enhance the carrier's ability to offer products and services tailored to the customer's needs. A carrier also may state in the notification that it may be compelled to disclose CPNI to any person upon affirmative written request by the customer.

(viii) A carrier may not include in the notification any statement attempting to encourage a customer to freeze third party access to CPNI.

(ix) The notification must state that any approval, or denial of approval for the use of CPNI outside of the service to which the customer already subscribes to from that carrier is valid until the customer affirmatively revokes or limits such approval or denial.

(3) A telecommunications carrier's solicitation for approval must be proximate to the notification of a customer's CPNI rights.

(4) A telecommunications carrier's solicitation for approval, if written, must not be on a document separate from the notification, even if such document is included within the same envelope or package.

§ 64.2009 Safeguards Required for Use of Customer Proprietary Network Information

(a) Telecommunications carriers must develop and implement software that indicates within the first few lines of the first screen of a customer's service record the CPNI approval status and reference the customer's existing service subscription.

(b) Telecommunications carriers must train their personnel as to when they are and are not authorized to use CPNI, and carriers must have a [sic] express disciplinary process in place.

(c) Telecommunications carriers must maintain an electronic audit mechanism that tracks access to customer accounts, including when a customer's record is opened, by whom, and for what purpose. Carriers must maintain these contact histories for a minimum period of one year.

(d) Telecommunications carriers must establish a supervisory review process regarding carrier compliance with the rules in this subpart for outbound marketing situations and maintain records of carrier compliance for a minimum period of one year. Specifically, sales personnel must obtain supervisory approval of any proposed outbound marketing request.

(e) A telecommunications carrier must have a corporate officer, as an agent of the carrier, sign a compliance certificate on an annual basis that the officer has personal knowledge that the carrier is in compliance with the rules in this subpart. A statement explaining how the carrier is in compliance with the rules in this subpart must accompany the certificate.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 98-9518

U S WEST, INC.,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION and
UNITED STATES OF AMERICA,

Respondents,

BELLSOUTH CORPORATION. and
SBC COMMUNICATIONS INC., *et al.*,

Intervenors.

CERTIFICATE OF SERVICE

I, Robert B. McKenna, on this 13th day of August, 1998, do hereby certify that two copies of the foregoing **BRIEF FOR PETITIONER AND INTERVENORS** were caused to be served, via first-class United States mail, postage prepaid, upon each of the following persons:

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Attachment B

ORAL ARGUMENT REQUESTED

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Intervenors.

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