State/location	Community No.	Effective date of eligibility	Current effective map date
Region IV			
North Carolina: Wayne County, unincorporated areas.	370254	.....do	Do.
Region VI			
Arkansas: Sebastian County, unincorporated areas ..	050462	.....do	Do.
Region VI			
Stuttgart, city of, Arkansas County	050002	.....do	Do.
Region VIII			
Wyoming: Sheridan County, unincorporated areas ...	560047	March 30, 1998, Suspension Withdrawn	March 30, 1998.
Region IX			
California:			
Palmdale, city of, Los Angeles County	060144	.....do	Do.
Los Angeles County, unincorporated areas	065043	.....do	Do.
Region X			
Washington:			
Issaquah, city of, King County	530079	.....do	Do.
King County, unincorporated areas	530071	.....do	Do.
Redmond, city of, King County	530087	.....do	Do.
Skykomish, town of, King County	530236	.....do	Do.

[1]The Town of Rockville has adopted the Charleston County (CID #455413) Flood Insurance Rate Map dated November 4, 1992.
[2]The Village of Bear Creek has adopted the Hays County (CID #480321) Flood Insurance Rate Map dated February 18, 1998.
[3]The City of Bulverde East has adopted the Comal County (CID #485463) Flood Insurance Rate Map dated July 17, 1995.
[4]The City of Center Point has adopted the Kerr County (CID #480419) Flood Insurance Rate Map dated May 1, 1979.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Issued: April 15, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–10941 Filed 4–23–98; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 64

[CC Docket No. 96–115; FCC 98–27]

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

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Second Report and Order (Order) released February 26, 1998 promulgates regulations to implement the statutory obligations of section 222 of the Telecommunications Act of 1996 relating to telecommunications carriers' use of Customer Proprietary Network Information (CPNI) and other customer information. The Order resolves CPNI issues raised in other proceedings that have been deferred to this proceeding, including obligations in connection with sections 272 and 274 of the 1996 Act.

EFFECTIVE DATE: May 26, 1998.

FOR FURTHER INFORMATION CONTACT: Lisa Choi, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. For additional information concerning the information collections contained in this Order, contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted February 19, 1998, and released February 26, 1998. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., N.W., Room 239, Washington, D.C. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc98–27.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. This Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, the Order contains a Final Regulatory Flexibility Analysis which is set forth in the Order. 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.

Paperwork Reduction Act

This Report and Order contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–12. Written comments by the public on the information collections are due 30 days after date of publication in the **Federal Register**. OMB notification of action is due July 6, 1998. Comments should address: (1) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–0715.

Title: Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of customer proprietary Network Information and Other Customer Information.

Form No.: N/A.

Type of Review: Revised collection.

Respondents: Business or other for-profit.

Public reporting burden for the collection of information is estimated as follows:

Information collection	Number of respondents (approximately)	Annual hour burden per response	Total annual burden
Customer Approval (47 CFR 64.2007)	4,832	78 hours	376,896 hours.
Customer Approval Documentation and Recordkeeping (47 CFR 64.2007(e) and 64.2009)	4,832	30 minutes	2,416 hours.
Notification of CPNI Rights (47 CFR 64.2007(f))	4,832	78 hours	376,896 hours.
Notification Recordkeeping (47 CFR 64.2007(e))	4,832	30 minutes	2,416 hours.
Audit Mechanism (47 CFR 64.2009)	4,832	30 minutes	2,416 hours.
Event Histories Recordkeeping (47 CFR 64.2009(d))	4,832	30 minutes	2,416 hours.
Corporate Compliance Certification (47 CFR 64.2009(e))	4,832	1 hour	4,832 hours.
Aggregate customer Information Disclosure Requirements for LECs	1,400	1 hour	1,400 hours.
Subscriber List Information Disclosure Requirement for Providers of Telephone Exchange Service*.	1,400	4 hours	5,600 hours.
CPNI Disclosure to Third Parties*	500	5 hours	2,500 hours.

*These requirements are imposed pursuant to statute. See 47 U.S.C. 222.

Total Annual Burden: 777,788 burden hours.

Estimated Costs Per Respondents: $47,500 (avg.); Total cost to industry: $229,520,000.

Needs and Uses: The Second Report and Order implements the statutory obligations of section 222 of the Telecommunications Act of 1996. Among other things, carriers are permitted to use CPNI, without customer aproval, to market offerings that are related to, but limited by, the customer's existing service relationship with their carrier. Carriers must obtain express customer approval to use CPNI to market service outside the customer's existing service relationship. Carriers must provide a one-time notification of customers' CPNI rights prior to any solicitation for approval. All of the collections would be used to ensure that telecommunications carriers comply with the CPNI requirements the Commission promulgates in the Order and to implement section 222 of the statute.

Synopsis of Second Report and Order

I. Commission Authority

1. We conclude that we have authority to promulgate regulations implementing section 222.

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

A. Scope of a Carrier's Right Pursuant to Section 222(c)(1)(A): the ''Total Service Approach''

2. The statutory language makes clear that Congress did not intend for the implied customer approval to use, disclose, or permit access to CPNI under section 222(c)(1)(A) to extend to all of the categories of telecommunications services offered by the carrier, as proposed by advocates of the single category approach. First, Congress' repeated use of the singular ''telecommunications *service*'' must be given meaning. Section 222(c)(1) prohibits a carrier from using CPNI obtained from the provision of ''*a* telecommunications *service*'' for any purpose other than to provide ''*the* telecommunications *service* from which such information is derived'' or services necessary to, or used in, provision of ''*such* telecommunications *service.*'' We agree with many commenters that this language plainly indicates that Congress both contemplated the possible existence of more than one carrier service and made a deliberate decision that section 222(c)(1)(A) not extend to all. Indeed, Congress' reference to plural ''telecommunications services'' in sections 222(a) and 222(d)(1) demonstrates a clear distinction between the singular and plural forms of the term. Under well-established principles of statutory construction, ''where Congress has chosen different language in proximate subsections of the same statute,'' we are ''obligated to give that choice effect.'' Consistent with this, section 222(c)(1)'s explicit restriction of a carrier's ''use'' of CPNI ''in the provision of'' service further evidences Congress' intent that carriers' *own* use of CPNI be limited to the service *provided to* the particular customer, and not be expanded to all the categories of telecommunications services *available from* the carrier.

3. We therefore reject the single category approach as contrary to the statutory language.

4. We likewise reject parties' suggestions that we interpret section 222(c)(1)(A) based on prior Commission decisions, including the *McCaw* orders, various *Computer III* orders, as well as the Common Carrier Bureau's opinion in *BankAmerica* v. *AT&T,* which permitted the sharing of customer information among affiliated companies based on the existing business relationship and the perceived benefits

of integrated marketing. We similarly reject parties' reliance on other statutes, particularly the *Cable Television Consumer Protection and Competition Act* (1992 Cable Act) and the *Telephone Consumer Protection Act of 1991 (TCPA),* as well as the Commission's implementation of those Acts. Neither of these statutes contains the specific and unique language of section 222 which expressly limits a carrier's ''use'' of customer information. Again, to the extent other provisions are probative, they indicate that Congress was clear when it intended to exempt information sharing within the context of the existing business relationship from general consumer protection provisions, but chose not to in section 222.

5. We also conclude, contrary to the suggestion of its proponents, that the discrete offering approach is not required by the language of section 222(c)(1)(A).

Our rejection of the discrete category approach, and support for the total service approach, is also informed by our understanding of the relationship between sections 222(c)(1)(A) and (d)(1). Had Congress intended to permit carriers to use CPNI only for ''rendering'' service, as suggested under the discrete offering approach, and as explicitly provided in section 222(d)(1), it would not have needed to create the exception in section 222(c)(1)(A). In contrast, by interpreting section 222(c)(1)(A) as we do, to permit some use of CPNI for marketing purposes, we give meaning to both statutory provisions. Indeed, in contrast with the various parties' views concerning the scope of section 222(c)(1)(A), commenters that addressed the meaning of section 222(d)(1) uniformly suggest that it does not extend to a carrier's use of CPNI for marketing purposes.

6. The legislative history confirms our view that in section 222 Congress intended neither to allow carriers unlimited use of CPNI for marketing purposes as they moved into new service avenues opened through the 1996 Act, nor to restrict carrier use of CPNI for marketing purposes altogether.

7. Finally, we also reject the various arguments advanced by GTE, PacTel, USTA, and U S WEST that our adoption of an interpretation more limited than the single or two category approaches raises Constitutional concern.

8. We reject the Constitutional takings arguments because, to the extent CPNI is property, we agree that it is better understood as belonging to the customer, not the carrier.

9. We likewise reject parties' Equal Protection challenges based on section 222's limitation to telecommunications carriers alone.

10. *Non-Telecommunications Offerings.* Several carriers argue that certain non-telecommunications offerings, in addition to being covered by section 222(c)(1)(B), also should be included within any service distinctions we adopt pursuant to section 222(c)(1)(A), including inside wiring, customer premises equipment (CPE), and certain information services. Based on the statutory language, however, we conclude that inside wiring, CPE, and information services do not fall within the scope of section 222(c)(1)(A) because they are not ''telecommunications services.'' More specifically, section 222(c)(1)(A) refers expressly to carrier use of CPNI in the provision of a ''telecommunications service.''

11. We conclude that carriers may not use CPNI derived from the provision of a telecommunications service for the provision or marketing of information services pursuant to section 222(c)(1)(A). We likewise conclude that inside wiring and CPE do not fall within the definition of ''telecommunications service,'' and thus do not fall within the scope of section 222(c)(1)(A).

12. We also conclude that, to the extent that services formerly described as adjunct-to-basic are offered by CMRS providers, these should be considered either within the provision of CMRS under section 222(c)(1)(A), or as services necessary to, or used in, CMRS under section 222(c)(1)(B). In addition, we agree with the result advocated by WTR, and conclude that a reasonable interpretation of section 222(c)(1)(A) permits carriers to use, disclose, or permit access to CPNI for the limited purpose of conducting research on the health effects of their service.

13. *Special Treatment for Certain Carriers.* We conclude 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). Based on the statutory language, it is clear that section 222 applies to all carriers equally and, with few exceptions, does not distinguish among classes of carriers.

14. We also decline to forbear from applying section 222(c)(1), or any of our associated rules, to small or competitive carriers, as SBT requests.

15. We also agree with a number of parties that there should be no restriction on the sharing of CPNI among a carrier's various telecommunications-related entities that provide different service offerings to the same customer.

16. In addition to finding that the total service approach is most consistent with the statutory language and legislative history, we are persuaded that, as a policy matter, the total service approach also best advances the principles of customer control and convenience implicitly embodied in sections 222(c)(1) and (c)(2).

17. *Customers do not expect that carriers will need their approval to use CPNI for offerings within the existing total service to which they subscribe.* We believe it reasonable to conclude that, where a customer subscribes to a diverse service offering—a mixture of local, long distance, and CMRS—from the same carrier or its subsidiary or affiliated companies, the customer views its telecommunications service as the total service offering that it has purchased, and can be presumed to have given implied consent to its carrier to use its CPNI for all aspects of that service.

18. By contrast, neither the discrete offering approach nor the three category approach serves the statutory principle of customer convenience or reasonably reflects customers' expectations of what constitutes their telecommunications service.

19. We also reject the discrete offering and three category approaches because we share the concern expressed by many parties that such restrictive interpretations may be difficult to implement as service distinctions, and corresponding customer subscriptions, become blurred with market and technological advances.

20. *Customers do not expect that carriers will use CPNI to market offerings outside the total service to which they subscribe.*

21. Second, even if the Westin survey accurately shows that customers desire ''one-stop shopping,'' and would permit carriers to share information in order to offer improved service, our interpretation of section 222(c)(1) does not foreclose carriers' ability to offer integrated packages nor the beneficial marketing uses to which CPNI can be made.

22. To be sure, under the total service approach carriers may not use CPNI without prior customer approval to target customers they believe would be receptive to new categories of service.

23. Finally, we reject the claim put forth by several proponents of the single category approach that narrower interpretations of section 222(c)(1)(A) would result in significant administrative burdens for carriers. On the contrary, we conclude that the total service approach is the least onerous administratively.

B. Scope of Carrier's Right Pursuant to Section 222(c)(1)(B)

24. As a threshold matter, given the wide range of views on the interpretation of section 222(c)(1)(B), we reject U S WEST's assertion that we simply craft rules repeating, verbatim, the statutory language. We clarify, however, that we do not attempt here to catalogue every service included within the scope of section 222(c)(1)(B), but rather address the specific offerings that have been proposed in the record as falling within that section, in particular, CPE, certain information services, and installation, maintenance, and repair services. We likewise believe that section 222(c)(1)(B) most appropriately is interpreted as recognizing that customers impliedly approve their carrier's use of CPNI in connection with certain *non*-telecommunications services. This implied approval, however, is expressly limited to those services ''necessary to, or used in, the *provision* of *such* telecommunications service.'' Through this limiting language, we believe carriers' CPNI use is confined only to certain non-telecommunications services (*i.e.* those ''services'' either ''necessary to'' or ''used in''), as well as to those services that comprise the customer's total service offering (*i.e.* ''such [section 222(c)(1)(A)] telecommunications service'').

25. *CPE and Certain Information Services.* Based on the statutory language we conclude that, contrary to the position advanced by several parties, a carrier may not use, disclose, or permit access to CPNI, without customer approval, for the provision of CPE and most information services because, as other commenters assert, they are not ''services necessary to, or used in, the provision of such telecommunications service'' under section 222(c)(1)(B).

26. Contrary to NYNEX's argument, we conclude that Congress' designation of the publishing of directories as ''necessary to, or used in'' the provision of a telecommunications service does not require a broad reading of section 222(c)(1)(B) that encompasses all information services. We are persuaded that section 222(c)(1)(B) covers services like those formerly characterized as ''adjunct-to-basic,'' in contrast to the information services such as call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, and Internet access services, that the parties identified in the record.

27. Our interpretation is supported by Congress' example of the publishing of directories. The publishing of directories, like those services formerly described as adjunct-to-basic, can appropriately be viewed as necessary to and used in the provision of complete and adequate telecommunication service.

28. As a matter of statutory construction, we find that the language of section 222(c)(1)(B) is clear and unambiguous, and does not permit the interpretation that CPE and most information services are ''services necessary to, or used in, the provision of such telecommunications service.'' But even if that language is ambiguous, we are unpersuaded by parties' contrary arguments based on the legislative history and policy considerations.

29. We also reject suggestions that restrictions on CPNI sharing in the context of CPE and information services would be contrary to customer expectations, as well as detrimental to the goals of customer convenience and one-stop shopping. As ITAA notes, CPNI is not required for one-stop shopping.

30. Finally, we reject parties' contentions that we should permit carriers to use CPNI in connection with CPE and information services because the Commission in the past permitted more information sharing.

31. *Installation, Maintenance, and Repair Service.* We conclude that, pursuant to section 222(c)(1)(B), a carrier may use, disclose, or permit access to CPNI, without customer approval, in its provision of inside wiring installation, maintenance, and repair services.

32. Specifically, we are persuaded that installation, maintenance, and repair of inside wiring is a service both ''necessary to'' and ''used in'' a carrier's provision of wireline telecommunications service. As such, carriers may use, without customer approval, CPNI derived from wireline service for the provision of inside wiring installation, maintenance, and repair services.

33. We further believe that our conclusion is fully consistent with customer expectation, and thereby furthers the statutory principles of customer control and convenience embodied in section 222.

C. Scope of Carrier's Right Pursuant to Section 222(d)(1)

34. In the context of installation, maintenance, and repair of inside wiring, we conclude that section 222(d)(1), as well as section 222(c)(1)(B), permit carrier use of CPNI without customer approval for the provision of such services. We agree with virtually all commenters that section 222(d)(1)'s permission for carriers to use CPNI ''to initiate, render, bill, and collect for telecommunications services'' includes the actual installation, maintenance, and repair of inside wiring.

35. Our conclusion is consistent with Equifax's concerns that we not interpret sections 222(d)(1) as well as 222(d)(2) in a manner that impedes carriers' access to information for the purpose of billing, fraud prevention, and related services, as well as the carriers' ability to provide the required information.

36. Contrary to the claims of AT&T and MCI, we further conclude, however, that the term ''initiate'' in section 222(d)(1) does not require that CPNI be disclosed by carriers when competing carriers have ''won'' the customer. We agree with GTE that section 222(d)(1) applies only to carriers already possessing the CPNI, within the context of the existing service relationship, and not to carriers seeking access to CPNI.

37. Furthermore, a carrier's failure to disclose CPNI to a competing carrier that seeks to initiate service to a customer that wishes to subscribe to the competing carrier's service, may well, depending upon the circumstances, constitute an unreasonable practice in violation of section 201(b). We also do not believe, contrary to the position suggested by AT&T, that section 222(d)(1) permits the former (or soon-to-be former) carrier to use the CPNI of its former customer (*i.e.*, a customer that has placed an order for service from a competing provider) for ''customer retention'' purposes.

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

A. Express Versus Notice and Opt-Out

38. We conclude, contrary to the position of a number of parties, that an express approval mechanism is the best means to implement this provision because it will minimize any unwanted or unknowing disclosure of CPNI. In addition, such a mechanism will limit the potential for untoward competitive advantages by incumbent carriers. In contrast, under an opt-out approach, as even its proponents admit, because customers may not read their CPNI notices, there is no assurance that any implied consent would be truly informed.

39. We are not persuaded by the statutory argument raised by the BOCs, AT&T, and GTE that Congress' requirement of an ''affirmative written request'' in section 222(c)(2) means that Congress intended to permit notice and opt-out when it required only ''approval'' in section 222(c)(1).

40. We likewise reject U S WEST's claim that the earliest versions of what became H.R. 1555 requires that we interpret ''approval'' to permit notice and opt-out.

41. We believe that, although the legislative history offers no specific guidance on the meaning of ''approval'' in section 222(c)(1), the language in the Conference Report, explaining that section 222 strives to ''balance both competitive and consumer privacy interests with regard to CPNI,'' strongly supports our conclusion that express approval is the better reading of the statutory language.

42. We also reject the arguments that Congress' express provision for a notice and opt-out mechanism in section 551 of the Act somehow compels that result here even though the language of section 222 contains no similar express reference to such a mechanism. To the contrary, section 551 confirms that Congress knew how to draft a notice and opt-out provision when it determined that such an approach was appropriate. For all these reasons we reject commenters' arguments that notice and opt-out is in some manner required by the language of section 222, or other precedent.

43. We reject PacTel's and U S WEST's contention that customers do not expect carriers to seek affirmative approval for the use of information to market services to which they do not subscribe, and that to do so would confuse them. To the contrary, based on the results of U S WEST's affirmative approval market trial, as well as those of a similar trial reported by Ameritech, we believe that, when customers wish to do so, they have no problem understanding a carrier's solicitation for approval and granting consent for the use of CPNI outside the scope of their total service offering.

44. We reject the argument that imposing an express approval requirement will ''effectively eliminate integrated marketing'' and thwart the development of one stop shopping. While section 222 precludes carriers from jointly marketing certain services through the use of CPNI, nothing in section 222 prevents carriers from jointly marketing services without relying on CPNI, as CPI and Cox point out. Moreover, while the use of CPNI may facilitate the marketing of telecommunications services to which a customer does not subscribe, such use is not necessary for carriers to engage in joint marketing. We thus reject PacTel's contention that an express approval requirement would vitiate section 601(d) of the 1996 Act, which allows carriers to market CMRS services jointly with other telecommunications services, and section 272(g) of the Act, which permits BOC joint marketing of telephone exchange service and in-region interLATA service, under certain conditions. To the contrary, carriers are free to market jointly telecommunications services without using CPNI to the extent such marketing is otherwise permissible under other provisions. In addition, as TRA points out, a customer desiring an integrated telecommunications service offering tailored to its needs simply may give approval to allow its carrier to access CPNI for purposes outside of sections 222(c)(1)(A) and (B).

45. We reject U S WEST's argument that an express approval requirement under section 222(c)(1) would impermissibly infringe upon a carrier's First Amendment rights. At the outset, we think there is a substantial question as to whether CPNI restrictions even implicate constitutionally protected ''speech.'' Carriers remain free to communicate with present or potential customers about the full range of services that they offer, and section 222 therefore does not prevent a carrier from engaging in protected speech with customers regarding its business or its products. What carriers cannot do is use confidential CPNI in a manner that is not permitted by the statute. While section 222 may constrain carriers' ability to more easily ''target'' certain customers for marketing by limiting in some circumstances their internal use of confidential customer information, we question whether that of itself constitutes a restriction on protected ''speech'' within the purview of the First Amendment. Nevertheless, to the extent that it were concluded that CPNI restrictions under section 222 did affect carrier communications with their customers or unrelated third parties in such a way as to implicate the First Amendment, at most commercial speech would be at issue since any limitations under section 222 relate solely to the economic interests of the speaker and its audience. But any governmental restrictions on commercial speech will be upheld where, as here, the government asserts a substantial interest in support of the regulation, the regulation advances that interest, and the regulation is narrowly drawn. As the Supreme Court has observed, it has never deemed it an abridgement of freedom of speech to make a course of conduct illegal merely because the conduct was initiated or conducted in part through language; to the contrary, similar regulation of business activity has been held not to violate the first Amendment.

46. We further conclude that an express approval requirement would not violate the free speech rights of customers. To the extent a customer wishes to receive information on offerings outside the scope of its total service offering, it simply may grant approval under section 222(c)(1). As we previously noted, to the extent customers are engaged in communications with their carrier regarding the servicing of their account, they are more likely to grant approval.

B. Written, Oral and/or Electronic Approval

47. We conclude that carriers should be permitted to obtain such approval through written, oral, or electronic means, as several commenters contend.

48. We disagree with parties arguing that section 222 mandates written approval. We find nothing in the language or design of section 222 that limits carriers to obtaining only written approval, despite arguments advanced by some of these commenters.

49. We also reject the contention that section 222(d)(3) of the Act supports a written approval requirement. While section 222(d)(3) contemplates oral approval in creating an exception for CPNI use during an inbound call, section 222(d)(3) also may be interpreted simply to permit a carrier to use CPNI to provide a customer with information for the duration of an inbound call, based on oral approval, even if the customer otherwise has restricted the carrier's use of its CPNI, as Ameritech points out.

50. We conclude that a carrier relying on oral customer approval should be required to notify customers of their CPNI rights, and should bear the burden of demonstrating that a customer has granted approval subsequent to such notification pursuant to the rules we adopt in this order.

C. Duration, Frequency, and Scope of Approval

51. We conclude that approval obtained by a carrier for the use of CPNI outside of section 222(c)(1), whether oral, written, or electronic, should remain in effect until the customer revokes or limits such approval, as some parties suggest. We do not require carriers to renew customer approval periodically, for example, annually or semi-annually, or to presume that customer approval is valid only for the duration of the transaction, if the customer has not otherwise specified the time period during which the approval remains valid.

52. We decline to establish at this time a restriction on the number of times a carrier may contact a customer to obtain approval for the use of CPNI outside of section 222(c)(1), despite arguments raised by some parties.

53. We conclude that allowing a customer to grant partial use of CPNI is consistent with one of the underlying principles of section 222 to ensure that customers maintain control over CPNI. A carrier could obtain partial use by virtue of its ability to view customer records for a limited duration, notwithstanding the customer's restriction of CPNI use.

D. Verification of Approval

54. We conclude that a carrier relying on oral approval under section 222(c)(1) should bear the burden of demonstrating that such approval has been given in compliance with the rules we adopt in this order, as a number of parties contend.

55. Because carriers must bear the burden of demonstrating that they have obtained oral approval under section 222(c)(1), we find it unnecessary to mandate specific verification mechanisms at this time. In general, we agree with those commenters arguing that a carrier relying on oral approval should be able to meet its burden by, for example, audiotaping customer conversations, or by demonstrating that a qualified independent third party operating in a location physically separate from the carrier's telemarketing representative has obtained customer approval under section 222(c)(1) subsequent to adequate notification of its CPNI rights, and has confirmed the appropriate verification data, *e.g.*, the customer's date of birth or social security number. In contrast, we would likely not consider the mere absence of any CPNI restriction in the customer's database or other account record sufficient to verify that a customer has given express approval in accordance with section 222(c)(1), despite SBC's suggestion. In addition, because carriers are required under our rules to notify customers of their CPNI rights prior to soliciting approval, we do not require them to send follow-up letters to customers confirming approval, contrary to some parties' contentions.

56. Finally, we require that carriers maintain records of notification and approval, whether written, oral, or electronic, and be capable of producing them if the sufficiency of a customer's notification and approval is challenged. Maintenance of such records will facilitate the disposition of individual complaint proceedings. We thus require that carriers maintain such records for a period of at least one year in order to ensure a sufficient evidentiary record for CPNI compliance and verification purposes.

E. Informed Approval Through Notification

57. We require carriers to provide their customers notification if the carrier wishes to use, disclose or permit access to CPNI beyond the purposes specified in sections 222(c)(1)(A) and (B); at this time, however, we make no decision on whether notice is required for use of CPNI within the scope of sections 222(c)(1)(A) and (B).

58. We agree with the majority of commenters that customers must be made aware of their CPNI rights before they can be deemed to have ''waived'' those rights.

59. We reject BellSouth's contention that customers reasonably expect businesses with whom they have a pre-existing relationship to use CPNI to offer new services, and that therefore carrier use of CPNI for the development and marketing of services should be deemed to be permitted or invited, in the absence of specific notification to the customer. Specific notification of the customer's CPNI rights, as a component of informed ''approval'' under section 222(c)(1), is warranted for uses of CPNI outside the customer's total service offering.

F. Form and Content of Notification

60. *Form of Notification.* We conclude that a carrier should be permitted to provide either written or oral notification, as a number of parties contend. Such notification, for example, may take the form of a bill insert, an individual letter, or an oral presentation that advises the customer of his or her right to restrict carrier access to CPNI.

61. We are not persuaded by parties' assertions that oral notification is necessarily less verifiable than written, will result in abuses, create greater disputes and confuse customers, is too difficult to accomplish successfully, or could be used to dissuade customers from releasing CPNI to a competitor. We therefore conclude that a carrier providing verbal notification of a customer's CPNI rights must carry the burden of showing that such notice has been given, in compliance with the requirements we adopt in this order. We further find that carriers may use any reasonable method for verifying oral notification that adequately confirms that such notification has been given, including, but not limited to, audiotaping customer conversations or using an independent third party verification process.

62. We find no reason to impose different notification requirements on large and small carriers, as some commenters suggest.

63. *Content of Notification.* At a minimum, customer notification, whether oral or written, 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 CPNI. If a carrier intends to share CPNI with an affiliate (or non-affiliate) outside the scope of section 222(c)(1), the notice must state that the customer has a right, and the carrier a duty, under federal law, to protect the confidentiality of CPNI. In addition, the notice must specify the types of information that constitute CPNI and the specific entities that will receive the CPNI, describe the purposes for which the CPNI will be used, and inform the customer of his or her right to disapprove those uses, and to deny or withdraw access to CPNI at any time. The notification also must advise customers of the precise steps they must 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. Any notification that does not provide the customer the option of denying access, or implies that approval is necessary to ensure the continuation of services to which the customer subscribes, or the proper servicing of the customer's account, would violate our notification requirements.

64. We also require that any notification provided by a carrier for uses of CPNI outside of section 222(c)(1) be reasonably comprehensible and non-misleading. In this regard, a notification that uses, for example, legal or technical jargon could be deemed not to be ''reasonably comprehensible'' under our requirements. If written notice 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. Finally, we require that, if any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.

65. We agree with CWI that a carrier should not be prohibited from stating in the notice 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. We also do not preclude a carrier from addressing the rights of unaffiliated third parties to obtain access to the customer's CPNI. Consequently, a carrier would not be prohibited from,

for example, informing a customer that it may direct the carrier to disclose CPNI to unaffiliated third parties upon submission to the carrier of an affirmative written request, pursuant to section 222(c)(2) of the Act. However, a carrier would be prohibited from including any statement attempting to encourage a customer to freeze third party access to CPNI.

66. We also conclude that carriers must provide notification of a customer's CPNI rights, whether oral or written, prior to any solicitation for approval. A customer must be fully informed of its right to restrict carrier access to sensitive information before it can waive that right. Any notification that is provided subsequent to a solicitation for customer approval under section 222(c)(1) is inadequate to inform a customer of such right. The notification may be in the same conversation or document as the solicitation for approval, as long as the customer would hear or read the notification prior to the solicitation for approval. Finally, we conclude that the solicitation for approval to use CPNI, whether in the form of a signature line, check-off box or other form, should be proximate to the written or oral notification, rather than at the end of a long document that the customer might sign for other purposes, or at the conclusion of a lengthy conversation with the customer, for example. Similarly, the solicitation for approval, if written, should not be on a document separate from the notification, even if such document is included within the same envelope or package. The notice should state that any customer approval, or denial of approval, for the use of CPNI outside of section 222(c)(1) is valid until the customer affirmatively revokes or limits such approval or denial.

67. We conclude that carriers need only provide one-time notification to customers of their CPNI rights, as suggested by some parties.

IV. Aggregate Customer Information

68. We reject the claim that our interpretation of sections 222(c)(1) and 222(c)(3) would constitute an unlawful taking. Even assuming carriers have a property interest in either CPNI or aggregate customer information, our interpretation of sections 222(c)(1) and 222(c)(3) does not ''deny all economically beneficial'' use of property, as it must, to establish a successful claim.

69. Although LECs face certain obligations when they use aggregate customer information under section 222(c)(3), Congress did not require that LECs give aggregate customer information to their competitors upon request in all circumstances. Rather, when LECs use this aggregate information only to tailor their service offering to better suit the needs of their existing customers—that is, within the scope of sections 222(c)(1)(A) and (B), LECs do not need to disclose the aggregate information. Moreover, LECs are *permitted* to use the aggregate information when targeting new service customers—that is, for purposes beyond the scope of section 222(c)(1)(A) and (B). When they do so, LECs simply must give that information to others upon request.

70. We also reject parties' Equal Protection challenge. In order to sustain an equal protection challenge, parties challenging the law must prove that the law has no rational relation to any conceivable legitimate legislative purpose. Making LEC aggregate customer information available on nondiscriminatory terms, when used for purposes beyond those in sections 222(c)(1)(A) and (B), is reasonably related to the legitimate goal of promoting open competition in telecommunications markets.

71. Finally, regarding the LECs' notice obligations, the nondiscrimination requirement in section 222(c)(3) protects competitors from anticompetitive behavior by requiring that LECs make aggregate customer information available ''upon reasonable request.'' We interpret these terms to permit a requirement that LECs honor standing requests for disclosure of aggregate customer information at the same time and same price as when disclosed to, or used on behalf of, their affiliates.

V. Section 222 and Other Act Provisions

72. We recognize an apparent conflict between sections 222 and 272. Because Congress did not make its intent clear, our resolution of the apparent conflict must therefore be guided by the interpretation that, in our judgment, best furthers the policies of these two provisions, and thereby, best reflects the statutory design. On this policy basis, we believe that interpreting section 272 to impose no additional obligations on the BOCs when they share CPNI with their statutory affiliates according to the requirements of section 222, as implemented in this order, most reasonably reconciles the goals of these two provisions.

73. We are persuaded here that we should interpret section 274 to impose no additional CPNI requirements regarding the BOCs' use of CPNI in connection with their provision of electronic publishing. Thus, as in the case of section 272, where section 222 appropriately balances the potentially competing interests in the specific context of carriers' use and disclosure of CPNI, we conclude that we should not upset the balance by ''superimposing'' nondiscrimination standards in section 274.

VI. Commission's Existing CPNI Regulations

74. We conclude that retaining the *Computer III* CPNI requirements, applicable solely to the BOCs, AT&T and GTE, would produce no discernable competitive protection, and would be confusing to both carriers and customers.

A. BOC Cellular CPNI Rule 22.903(f) and *Computer II* Rule 64.702(d)(3)

75. We conclude that we should eliminate both rules 22.903(f) and 64.702(d)(3).

B. Safeguards Under Section 222

76. We confirm our tentative conclusion that the *Computer III* safeguards, as they currently operate, should not be applied to other carriers. Insofar as the statutory scheme we implement in this order fully supplants our *Computer III* CPNI framework, we are further persuaded that we should likewise not retain the CPNI safeguards designed to ensure compliance within the *Computer III* framework. The record nevertheless supports the need to specify safeguards to prevent unapproved use, disclosure, and access to customer CPNI by carrier personnel and unaffiliated entities under the new scheme.

77. Although we believe different rules are not generally necessary for small or rural carriers, we note that such carriers may seek a waiver of our new CPNI rules if they can show that our rules would be unduly burdensome, and propose alternative methods for safeguarding the privacy of their customers, consistent with section 222.

78. *Access Restrictions.* We decline to require restrictions that would prohibit carrier personnel from accessing CPNI of customers who have either failed, or expressly declined, to give requisite approval for carrier use of CPNI for marketing purposes.

79. *Use Restrictions and Personnel Training.* We specifically require that carriers develop and implement software systems that ''flag'' customer service records in connection with CPNI. Carriers have indicated that their systems could be modified relatively easily to accommodate such CPNI ''flags.'' The flag must be conspicuously displayed within a box or comment

field within the first few lines of the first computer screen. The flag must indicate whether the customer has approved the marketing use of his or her CPNI, and reference the existing service subscription. In conjunction with such software systems, we require that all employees with access to customer records be trained as to when they can and cannot access the customer's CPNI. Carriers must also maintain internal procedures to handle employees that misuse CPNI contrary to the carriers' stated policy. These requirements represent minimum guidelines that we believe most carriers can readily implement and that are not overly burdensome.

80. *Access Documentation.* We require that carriers maintain an electronic audit mechanism that tracks access to customer accounts. The system must be capable of recording whenever customer records are opened, by whom, and for what purpose. We believe awareness of this ''audit trail'' will discourage unauthorized, ''casual'' perusal of customer accounts, as well as afford a means of documentation that would either support or refute claimed deliberate carrier CPNI violations. We further require that carriers maintain such contact histories for a period of at least one year to ensure a sufficient evidentiary record for CPNI compliance and verification purposes.

81. *Supervisory Review for Outbound Marketing Campaigns.* We require carriers to establish a supervisory review process that ensures compliance with CPNI restrictions when conducting outbound marketing. Although supervisory review would neither be convenient nor practical when customers initiate a service call (*i.e.*, in the inbound marketing context), we believe that such review is fully warranted in connection with outbound marketing campaigns. There is both less likelihood that customers will detect CPNI violations and greater incentive for sales employees to misuse CPNI when the dialogue with the customer is initiated by the carrier. Indeed, a major focus of outbound sales representatives is on the acquisition of new customers rather than on the retention of, and service to, current customers. Accordingly, we require that sales personnel obtain supervisory review of any proposed request to use CPNI for outbound marketing purposes. We require carriers to maintain a record of the ''event histories'' (like contact histories) for at least one year from the date of the marketing campaign.

82. *Corporate Certification.* We require each carrier to submit a certification signed by a current corporate officer, as an agent of the corporation, attesting that he or she has personal knowledge that the carrier is in compliance with our CPNI requirements on an annual basis. This certification must be made publicly available, and be accompanied by a statement explaining how the carrier is implementing our CPNI rules and safeguards.

83. *Additional requirements.* The Commission will enforce all rules announced in this order upon their effective date. Because carriers may need time to conform their data systems and operations to comply with the software flags and electronic audit mechanisms required under this order, however, we will not seek enforcement of these specific safeguard rules for a period of eight months from the date these rules become effective. After that time, we authorize the Chief of the Common Carrier Bureau to undertake enforcement actions when necessary and appropriate, and, to the extent that carrier behavior justifies requirements beyond those outlined herein, to establish additional safeguards. This delegation to the Common Carrier Bureau will facilitate the handling of CPNI compliance issues in an expedited manner.

VII. Procedural Issues

A. Second Report and Order

1. Final Regulatory Flexibility Analysis

84. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice.* The Commission sought written public comment on the proposals in the *Notice*, including the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *Second Report and Order* conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law No. 104–121, 110 Stat. 847 (1996).

a. Need for and Objectives of the Proposed Rules

85. The Commission, in compliance with section 222 of the 1996 Act, promulgates rules in this order to reflect Congress' directive to balance the competitive and customer privacy interests associated with the use and protection of customer proprietary network information (CPNI), while fully considering the impact of these requirements on small carriers. This order reflects the statutory principle that customers must have the opportunity to protect the information they view as sensitive and personal from use and disclosure by carriers. As a general matter, we find that customer approval for carriers to use, disclose, or permit access to CPNI is inferred from the existing customer-carrier relationship; therefore, we conclude that such consent should be limited to the ''total service offering'' to which the customer subscribes from a carrier. To preserve the customer's control over the dissemination of sensitive information, we require an express approval requirement for the use of CPNI beyond the total service offering to which the customer subscribes from a carrier. While these rules permit customers to decide whether and to what extent their CPNI is used, they also restrict carriers' anticompetitive use of CPNI.

b. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

86. In the IRFA, the Commission generally stated that any rule changes that might occur as a result of this proceeding could impact small business entities. Specifically, in the IRFA, the Commission indicated there were no reporting, recordkeeping, or other compliance requirements. The IRFA solicited comment on alternatives to our proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding. In response we received no comments specifically directed to the IRFA. As noted *infra* Part X.A.1.e of this FRFA, in making the determinations reflected in this order, we have given consideration to those comments of the parties that addressed the impact of our proposed rules on small entities.

c. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

87. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' For the purposes of this order, the RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets 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.

88. Although affected incumbent local exchange carriers (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.''

89. *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.

90. *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.

91. *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.

92. *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.

93. *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.

94. *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.

95. *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.

96. *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 are 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.

97. *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.

98. *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.

99. *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.

100. *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.

101. *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.

102. 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.

103. *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.

d. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

104. In this *Second Report and Order*, if carriers choose to use CPNI to market service offerings outside the customer's existing service, we obligate these carriers to (1) obtain customer approval; (2) provide their customers a one-time notification of their CPNI rights prior to any solicitation for approval; and (3) maintain records of customer notification and approval, whether oral, written, or electronic.

105. We require carriers to develop and implement software systems that ''flag'' customer service records in connection with CPNI. The flag must be conspicuously displayed within a box or comment field within the first few lines of the first computer screen, and the flag must indicate whether the customer has approved the marketing use of his or her CPNI, and reference the existing service subscription.

Also in connection with the software systems, carriers must implement internal standards and procedures informing employees when they are authorized to utilize CPNI. In addition, they must develop standards and procedures to handle employees who misuse CPNI.

106. We further require that carriers maintain an electronic audit mechanism that tracks access to customer accounts and is capable of recording whenever customer records are opened, by whom, and for what purpose. Carriers must maintain these ''contact histories'' for a period of at least one year to ensure a sufficient evidentiary record for CPNI compliance and verification purposes. Additionally, sales personnel must obtain supervisory review of any proposed request to use CPNI for outbound marketing purposes, to ensure compliance with CPNI restrictions when conducting such campaigns.

107. Finally, carriers must submit on an annual basis a certification signed by a current corporate officer, as an agent of the corporation, attesting that he or she has personal knowledge that the carrier has complied with the rules adopted in this order. The certification must be made publicly available, and be accompanied by a statement explaining how the carrier is implementing our CPNI rules and safeguards.

e. Significant Alternatives and Steps Taken by Agency to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent With Stated Objectives

108. After consideration of possible alternatives, we have concluded that our rules should apply equally to all carriers. Several parties in their comments address the impact of possible changes in our CPNI rules on small entities. As a general matter, various small entities express concern that, having never been required to comply with CPNI regulations in the past, any regulation that extends to them will impose immediate costs. Specifically, SBT argues that we should forbear from applying section 222(c)(1) to small businesses, and thereby permit their use of CPNI for all marketing purposes, because small entities need more flexibility to use CPNI to be competitive in the marketplace. SBT likewise opposes a three category approach, claiming it gives large carriers flexibility to develop and meet customers' needs, but may unnecessarily limit small business as competition grows. SBT maintains that small carriers could be competitively disadvantaged by any interpretation of section 222(c)(1)(A) other than the single category approach because a large carrier can base the design of a new offering on statistical customer data and market widely, while a small business can best meet specialized subscriber needs if it offers local, interexchange, and CMRS tailored to the specific subscriber. ALLTEL and SBC agree with USTA that a multiple category definition of telecommunications service would specifically burden small companies.

109. As we discussed in this order, we decline to forbear from applying section 222(c)(1) to small carriers because we are unpersuaded that customers of small businesses have less meaningful privacy interests in their CPNI. We believe that the total service approach furthers the balance of privacy and competitive considerations for all carriers and provides all carriers with flexibility in marketing their telecommunications products and services. Indeed, if SBT is accurate in its claim that small businesses typically have closer personal relationships with their customers, then small businesses likely would have less difficulty in obtaining customer approval to market services outside of a customer's existing service. Under the total service approach, carriers are able to use the customer's entire customer record in the course of providing the customer service, and no

business is prohibited from meeting customer needs by offering tailored packages of local, interexchange, and CMRS with customer approval. Moreover, to the extent carriers do not choose to use CPNI for marketing purposes, or do not want to market new service categories, they do not need to comply with our approval or notice requirements. Finally, given our decisions to permit oral, written, or electronic approval under section 222(c)(1), and impose use rather than access restrictions, the total service approach addresses any concern that CPNI restrictions will disrupt the customer-carrier dialogue or the carriers' ability to provide full customer service.

110. Some commenters urge the Commission to adopt notification rules which would require dominant carriers to give their customers written notification of their CPNI rights, while smaller carriers or carriers in competitive markets would be permitted to give oral notification to its customers. We find no reason to impose a written notification requirement only on incumbent carriers. While competitive concerns may justify different regulatory treatment for certain carriers, we believe all customers, despite the size or identity of their carrier, have similar and important privacy concerns.

111. We also reject the suggestion by Arch, LDDS WorldCom, MCI, Sprint, and TCG that our rules in connection with CPNI safeguards be limited to large or incumbent carriers, as they had been previously. Rather, we maintain that Congress intended for all carriers to safeguard customer information, and that the safeguards we adopt today do not impose a greater administrative burden on small carriers. We remain unconvinced that the burdens of section 222 are so great on small carriers that they cannot comply with reasonable restrictions. Indeed, the mechanisms we require expressly factor commercial feasibility and practice into an appropriate regulatory framework, and represent minimum general requirements. We also find that the use of an electronic audit mechanism to track access to customer accounts is not overly burdensome because many carriers already maintain such capabilities for a variety of business purposes unrelated to CPNI. Carriers have indicated that such capabilities are important, for example, to track employee use of company resources, including computers and databases, as well as for personnel disciplinary purposes. The contact histories that we require carriers to maintain for a period of at least one year also should not be burdensome to carriers because carriers routinely evaluate these contact histories to determine the success of marketing campaigns. As we discuss in this order, we believe the safeguards we adopt in this order will afford carriers the flexibility in conforming their systems, operations, and procedures to assure compliance with our rules. Furthermore, in an effort to reduce, for all carriers, the administrative burden of compliance with our rules, we specifically decline to impose a password access restriction on carrier use of CPNI. We also conclude that use restrictions are less burdensome to all carriers, including medium and small sized carriers. We decline at this time to impose a requirement of separate marketing personnel on the basis that such a rule may produce inefficiencies particularly for small carriers, and thereby may dampen competition by increasing the costs of entry into telecommunications markets.

2. Paperwork Reduction Act Analysis

112. This *Second Report and Order* contains several new information collections. We describe our collections as follows:

113. In this order, if carriers choose to use CPNI to market service offerings outside the customer's existing service, we obligate these carriers to obtain customer approval and document such approval through software ''flags'' on customer service records indicating whether the customer has approved or declined the marketing use of his or her CPNI when solicited. These requirements constitute new ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Implementation of this requirement is subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

114. Additionally, we require all telecommunications carriers that choose to solicit customer approval to provide their customers a one-time notification of their CPNI rights prior to any such solicitation. Pursuant to this one-time notification requirement, these carriers must maintain a record of such notifications. This requirement constitutes a new ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Implementation of this requirement is subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

115. All carriers must record whenever customer records are opened, by whom, and for what purpose, and maintain these contact histories for a period of at least one year. These requirements constitute new ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Implementation of this requirement is subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

116. Finally, we have adopted rules in this order requiring all telecommunications carriers to submit on an annual basis a certification signed by a current corporate officer attesting that he or she has personal knowledge that the carrier is in compliance with the rules we promulgated in this order, and to create an accompanying statement explaining how the carriers are implementing our rules and safeguards. Pursuant to this recordkeeping requirement, all telecommunications carriers must maintain in a publicly available file the compliance certificates and accompanying statements. This requirement constitutes a new ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Implementation of all of these recordkeeping requirements are subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

VIII. Ordering Clauses

117. Accordingly, *It Is Ordered* that pursuant to sections 1, 4(i), 222 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 222 and 303(r), a *Report and Order* is hereby *Adopted*.

118. *It is further ordered* that, pursuant to our own motion, paragraph 222 of *In the Matter of Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96–149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996), is hereby *Overruled*.

119. *It Is Further Ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *Shall Send* a copy of this *Second Report and Order,* including the associated Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981).

120. *It Is Further Ordered* that part 22 of the Commission's rules, 47 CFR 22.903 and part 64 of the Commission's

rules, 47 CFR 64.702(d)(3) are *Removed* as set forth in the Rule Changes.

121. *It Is Further Ordered* that part 64 of the Commission's rules, 47 CFR part 64 is *Amended* as set forth in Rule Changes, effective 30 days after publication of the text thereof in the **Federal Register**.

List of Subjects

47 CFR Part 22

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons set out in the preamble, 47 CFR parts 22 and 64 are amended as follows:

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for part 22 is revised to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309 and 332.

§ 22.903 [Removed].

2. Remove § 22.903.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

3. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 222, 254(k).

§ 64.702 [Amended]

4. In § 64.702 remove and reserve paragraph (d)(3).

5. Subpart U is added to part 64 to read as follows:

Subpart U—Customer Proprietary Network Information

Sec.

Subpart U—Customer Proprietary Network Information

§ 64.2001 Basis and purpose.

(a) *Basis.* The rules in this subpart are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose.* The purpose of the rules in this subpart 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).*

(1) Customer proprietary network information (CPNI) is:

(i) 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

(ii) Information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier.

(2) 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 paragraph (c).

(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 to 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 in this part.

(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 must 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 an 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.

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