(b) Sections 4206(a) and (b) of the Balanced Budget Act of 1997 (42 U.S.C. 1395j).

3. Section 414.62 is added to subpart A, to read as follows:

§ 414.62 Payment for consultations via interactive telecommunications systems.

(a) *Limitations on payment.* Medicare payment for a professional consultation conducted via interactive telecommunications systems is subject to the following limitations:

(1) The payment may not exceed the current fee schedule amount of the consulting practitioner for the health care services provided.

(2) The payment may not include any reimbursement for any telephone line charges or any facility fees.

(3) The payment is subject to the coinsurance and deductible requirements of section 1833(a)(1) and (b) of the Act.

(4) The payment differential of section 1848(a)(3) of the Act applies to services furnished by nonparticipating physicians.

(b) *Prohibited billing.* The beneficiary may not be billed for any telephone line charges or any facility fees.

(c) *Assignment required for nonphysician practitioners.* Payment to nonphysician practitioners is made only on an assignment-related basis.

(d) *Who may bill for the consultation.* Only the consultant practitioner may bill for the consultation.

(e) *Sharing of payment.* The consultant practitioner must provide to the referring practitioner 25 percent of any payments, including any applicable deductible or coinsurance amounts, he or she received for the consultation.

(f) *Sanctions.* A practitioner may be subject to the applicable sanctions provided for in chapter V, parts 1001, 1002, and 1003 of this title if he or she—

(1) Knowingly and willfully bills or collects for services in violation of the limitations of this section on a repeated basis; or

(2) Fails to timely correct excess charges by reducing the actual charge billed for the service to an amount that does not exceed the limiting charge for the service or fails to timely refund excess collections.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 8, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: April 14, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–16278 Filed 6–19–98; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 64

[CC Docket No. 96–115; DA 98–971]

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

AGENCY: Federal Communications Commission.

ACTION: Clarification; proposed rule.

SUMMARY: The Order released May 21, 1998 clarifies various issues pertaining to the *Second Report and Order and Further Notice of Proposed Rulemaking* released February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Brent Olson, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted and released May 21, 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., NW., Room 239, Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/da98971.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., NW., Washington, DC. 20036.

Synopsis of Order on Reconsideration

I. Introduction

1. On February 26, 1998, the Commission released a *Second Report and Order and Further Notice of Proposed Rulemaking,* 63 FR 20326, April 24, 1998 (*Second Report and Order*), interpreting and implementing, among other things, the portions of section 222 of the Communications Act of 1934, as amended, that govern the use and disclosure of, and access to, customer proprietary network information (CPNI) by telecommunications carriers. Since the release of the *Second Report and Order,* a number of parties have requested that the Commission clarify various issues pertaining to that order. In response to these requests, the Common Carrier Bureau issues this order clarifying the *Second Report and Order* as follows:

(a) Independently-derived information regarding customer premises equipment (CPE) and information services is not CPNI and may be used to market CPE and information services to customers in conjunction with bundled offerings.

(b) A customer's name, address, and telephone number are not CPNI.

(c) A carrier has met the requirements for notice and approval under section 222 and the Commission's rules where it has both provided annual notification to, and obtained prior written authorization from, customers with more than 20 access lines in accordance with the Commission's former CPNI rules.

(d) Although a carrier must ensure that its certification of corporate compliance with the Commission's CPNI rules is made publicly available, it is not required to file this certification with the Commission.

II. Clarification of Marketing Uses of Customer Information Related to CPE or Information Services

2. Section 222(c)(1) establishes the limited circumstances in which carriers can use, disclose, or permit access to CPNI without first obtaining customer approval. In interpreting section 222(c)(1) in the *Second Report and Order,* the Commission adopted an approach that allows carriers to use CPNI, without first obtaining customer approval, to market improvements or enhancements to the package of telecommunications services the carrier already provides to a particular customer, which it referred to as the ''total service approach.''

3. The Commission's discussion, however, did not specifically address a carrier's ability to use CPNI when its customers obtain their telecommunications service as part of a bundled package that includes non-telecommunications service offerings, such as CPE or certain information services.

4. We make clear that, when a customer purchases CPE or information services from a carrier that are bundled with a telecommunications service, the carrier subsequently may use any customer information independently derived from the carrier's prior sale of CPE to the customer or the customer's subscription to a particular information service offered by the carrier in its

marketing of new CPE or a similar information service that is bundled with a telecommunications service. Neither CPE nor information services constitute ''telecommunications services'' as defined in the Act. Therefore, any customer information derived from the carrier's sale of CPE or from the customer's subscription to the carrier's information service would not be ''CPNI'' because section 222(f) defines CPNI in terms of information related to a ''telecommunications service.'' As a result, in situations where the bundling of a telecommunications service with CPE, information services, or other non-telecommunications services is permissible, a carrier may use CPNI to target particular customers in a manner consistent with the *Second Report and Order*, and it also may use the customer information independently derived from the prior sale of the CPE, the customer's subscription to a particular information service, or the carrier's provision of other non-telecommunications offerings to market its bundled offering.

5. In an effort to further explain a carrier's obligation in the context of bundled offerings, we provide an example of how the Commission's rules would apply in the CMRS context. A CMRS provider could use CMRS-derived CPNI to target its high usage analog wireless customers to offer them new digital wireless service plans. If such an analog customer also had purchased previously a CMRS handset, or an information service such as voice mail, as part of a bundled offering from the carrier, the carrier also would have access to information concerning the customer's purchase of the carrier's CPE and information service that is independent from the CPNI derived from the provision of the CMRS service. Consistent with the total service approach, the carrier could use such customer information to market new digitally-compatible CPE and new voice mail service in conjunction with the offering of new digital wireless service in a single contact with the customer, without first obtaining the customer's approval.

6. In contrast, where a particular customer has not purchased CPE or information services from the carrier that is providing its telecommunications services, the carrier would be subsequently prohibited from using CPNI, without first obtaining customer approval, to market a bundled offering of CPE or information services with telecommunications services to such a customer. In this situation, absent customer approval, the carrier would be using CPNI in violation of section 222(c)(1) to market CPE or information services to a customer with whom they had no existing relationship derived from the carrier's sale of CPE or the customer's subscription to the carrier's information service. Similarly, the general knowledge that all wireline customers have a telephone would not permit carriers to use CPNI derived from wireline service to select those individuals to whom to market the carrier's CPE offerings.

7. We also clarify that, only where CPE or an information service is part of a bundled offering, including a telecommunications service, and the carrier is the existing CPE or information service provider, could the carrier use CPNI to market a new bundled offering that includes new CPE or similar information services. For example, carriers cannot use CPNI to select certain high usage customers to whom they also sold telephones, and then market only new CPE that is not part of a new bundled plan. Section 222(c)(1)(A) permits the use of CPNI, without first obtaining customer approval, only ''in the provision of the telecommunications service from which such information is derived.'' Therefore, when a carrier has identified a customer through the use of CPNI, but is not offering a telecommunications service in conjunction with its marketing of CPE or information services, that carrier would be using CPNI outside the provision of the service from which it is derived, in violation of section 222 and the Commission's rules.

III. Customer's Name, Address, and Telephone Number

8. We clarify that a customer's name, address, and telephone number do not fall within the definition of CPNI, set forth in section 222(f)(1).

9. We consider this information to be part of a carrier's business record or customer list that identifies the customer and indicates how that customer can be contacted by the carrier. Although such information generally appears on a customer's billing statement, it does not pertain to the ''telephone exchange service or toll service'' received by the customer, as specified by the statutory definition in section 222(f)(1)(B). If the definition of CPNI included a customer's name, address, and telephone number, a carrier would be prohibited from using its business records to contact any of its customers to market any new service that falls outside the scope of its existing service relationship with those customers. In fact, under such an interpretation, a carrier would not even be able to contact a single customer in an effort to obtain permission to use their CPNI for marketing purposes because the carrier's mere use of its customer list to initiate contact with its customers would constitute a violation of section 222. This anomalous result was clearly not intended by section 222. Therefore, we clarify that a carrier's use of its customers' name, address, and telephone number for marketing purposes would not be subject to the CPNI restrictions in section 222(c)(1) because such information is not CPNI. Thus, under section 222 and the Commission's rules, a carrier could contact all of its customers or all of its former customers, for marketing purposes, by using a customer list that contains each customer's name, address, and telephone number, so long as it does not use CPNI to select a subset of customers from that list.

IV. Notice and Written Approval Under the Computer III CPNI Framework

10. Prior to the adoption of the Telecommunications Act of 1996, the framework established under the Commission's *Computer III* regime governed the use of CPNI by the BOCs, AT&T, and GTE to market CPE and enhanced services. Two important components of this *Computer III* framework were: (1) a carrier's obligation to provide an annual notification of CPNI rights to multi-line customers regarding enhanced services, as well as a similar notification requirement regarding CPE that applied only to the BOCs, and (2) a carrier's obligation to obtain prior written authorization from business customers with more than 20 access lines to use CPNI to market enhanced services. We clarify that in circumstances where a carrier has provided annual notification and received prior written authorization from customers with more than twenty access lines, the requirements for notice and approval under section 222, and the associated Commission rules, are satisfied for those customers.

11. We find that carriers that have complied with the *Computer III* notification and prior written approval requirement in order to market enhanced services to business customers with more than 20 access lines are also in compliance with section 222 and the Commission's rules. Such carriers may rely on their previous compliance with the *Computer III* notification and approval requirements to market enhanced services to business customers with more than 20 access lines without taking any additional steps to notify such customers of their CPNI rights or to obtain customer approval to use CPNI to market enhanced services to such customers.

V. Safeguards

12. As one of several CPNI safeguards, the Commission required in the *Second Report and Order* each carrier to certify that it is in compliance with the Commission's CPNI rules. In describing a carrier's duty, the Commission stated that each carrier must ''submit a certification'' and that the certification ''must be made publicly available.'' We clarify that the Commission's use of the word ''submit'' in the order was not intended to require carriers to file such certifications with the Commission. Rather, the order directs carriers to ensure only that these corporate certifications be made publicly available.

VI. Ordering Clauses

13. *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), and authority delegated thereunder pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91, 0.291, this Order is hereby adopted.

Federal Communications Commission.

Richard K. Welch,

Acting Deputy Chief, Common Carrier Bureau.

[FR Doc. 98–16511 Filed 6–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 98–93; FCC 98–117]

1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission seeks comment on proposals that would change fundamentally the way it evaluates proposals that would create interference in the FM band. It also seeks comment on whether the contingent application rule should be modified to permit coordinated facility modifications among broadcasters. The Commission proposes a signal propagation methodology that more accurately takes into account terrain effects to better predict where interference would not occur; adoption of this methodology would permit certain applicants to obtain greater service improvements. The Commission also proposes other changes to promote greater technical flexibility in the FM service and to streamline and expedite the processing of applications to modify existing facilities in several services.

DATES: Comments must be filed on or before August 21, 1998. Reply comments are due September 21, 1998. Written comments by the public on the proposed information collections are due on or before August 21, 1998.

ADDRESSES: All comments and reply comments should be addressed to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Copies of these pleadings also should be sent to the Mass Media Bureau, Audio Services Division (Room 302), 1919 M St., N.W., Washington, D.C. 20554, and the Office of General Counsel (Room 610), 1919 M St., N.W., Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Peter Doyle, Dale Bickel or William Scher, Audio Services Division, Mass Media Bureau, (202) 418–2780. For additional information concerning the information collections contained in this *Notice of Proposed Rulemaking (Document)* contact Judy Boley at (202) 418–1214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* in MM Docket No. 98–93 and FCC No. 98–117, adopted June 11, 1998 and released June 15, 1998. The complete text of this *Notice of Proposed Rulemaking* is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M St., N.W., Washington, D.C. 20554 and may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800 (phone), (202) 857–3805 (facsimile), 1231 20th St., N.W., Washington, D.C. 20036.

Synopsis of Notice of Proposed Rulemaking

I. Negotiated Interference in the FM Service

A. Introduction/Background

1. The Commission frequently has used the term ''negotiated interference'' to describe agreements between or among stations to accept new or increased interference within their protected service contours, typically in connection with proposals to expand service by one or several stations. The Commission generally has rejected attempts by applicants to negotiate interference levels on a case-by-case basis, holding that the selection of interference standards is a non-delegable Commission responsibility. Nevertheless, the Commission has concluded that the public interest would be served by modifying the contingent application rule and AM cut-off procedures to facilitate coordinated technical changes between AM stations. No parallel changes have been adopted for FM applications, with the exception of certain grandfathered short-spaced stations. Thus, the Commission has condoned the use of agreements to promote service improvements in the technically more difficult AM service, as well as agreements between stations that operate, axiomatically, at spacings substantially less than current new station requirements, while consistently rejecting the use of these same agreements between fully-spaced FM stations where interference concerns generally would be less. In short, current Commission policy provides the least flexibility for technical facility improvements in mid-sized major markets where FM broadcasters face the greatest technical constraints to undertake such improvements.

B. Specific Proposals

i. Agreements Involving Applications for Coordinated FM Station Changes

2. *Background.* Section 73.3517 prohibits the filing of contingent applications in the FM broadcast services.[1] As stated above, the Commission permits the filing of contingent applications to facilitate interference reduction and service improvements by either separately or commonly owned AM stations. The Commission has received similar requests from FM stations that have entered into agreements that propose ''coordinated'' or ''interrelated'' facility

[1] The rule does not differentiate between major and minor changes. *Amendment of Sections 1.517 and 1.520,* 61 FCC 2d 38 (1976).