**FLORIDA PUBLIC SERVICE COMMISSION**

 **FLETCHER BUILDING**

 **101 EAST GAINES STREET**

 **TALLAHASSEE, FLORIDA 32399-0850**

 **M E M O R A N D U M**

 **MAY 5, 1994**

**TO : DIRECTOR OF RECORDS AND REPORTING**

**FROM : DIVISION OF COMMUNICATIONS (COLEMAN, LONG)**

 **DIVISION OF LEGAL SERVICES (HATCH)**

**RE : DOCKET NO. 931019-TP INVESTIGATION INTO DISSEMINATION OF LONG DISTANCE TELEPHONE AND OTHER CUSTOMER RECORDS AND RELATED CUSTOMER PRIVACY ISSUES**

**AGENDA: MAY 17, 1994 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE**

**CRITICAL DATES: NONE**

**SPECIAL INSTRUCTIONS: I:\PSC\CMU\WP\931019.RCM**

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 **CASE BACKGROUND**

 On October 21, 1993 Commission staff opened a generic docket to investigate the treatment of long distance telephone and other customer records, and related customer privacy issues. There have been prior instances in which toll records were disclosed without consent of the subscriber. There is much concern as to how these records were obtained. This prompted Commission staff to investigate the telephone companies policies in regards to customer proprietary information. Currently, the Commission has no specific rules which govern the dissemination of customer records. Staff is now proposing requirements that will protect and ensure a customer's fundamental rights to privacy.

 **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission establish requirements or set standards that protect and enforce confidentiality of long distance telephone and other customer records?

**RECOMMENDATION:** Yes, the Commission should establish requirements or set standards that will protect and enforce confidentiality of long distance telephone and other customer records.

**STAFF ANALYSIS:** This docket was initiated to address concerns regarding the dissemination of long distance telephone records and other customer records, and related customer privacy issues. Staff believes that requirements need to be implemented to ensure that telephone companies do not disclose or sell customer records without the customer's consent.

 With new technology being introduced in the telecommunications industry, staff is concerned that rights to privacy may be abused. Staff believes that billing information should not be obtained or divulged by anyone unless a lawful authority or the customer himself has requested it. Customer proprietary information includes but is not limited to the services to which a person subscribes, local usage detail and toll usage detail.

 Staff has dealt with similar instances which required review of proprietary record treatment. One instance is Commission Order Number 21815, section VIII. This order addresses Customer Proprietary Network Information (CPNI). Customer Proprietary Network Information is defined as information or data accumulated by the local exchange company as a result of providing basic network services to its customers. Prior to accessing CPNI, telecommunication companies must first obtain written authorization from the subscriber.

 Although, this describes certain requirements when dealing with proprietary information, there still appears to be other ways of obtaining information without authorization. Staff believes that additional requirements on telecommunications companies may decrease the possibility of unauthorized CPNI access or access of other proprietary information.

 Staff sent interrogatories to each Company to find out how customer records are handled. Staff found that access to customer records varies, depending on department and job function. Every Company has a policy, such as a Code of Business Ethics or some form of a security policy or other type of procedures for handling proprietary information, although such procedures may not be formal or in written form. The companies who do have some type of written policy require all employees to sign some form of acknowledgement.

 The forms are utilized to impress on employees that they should not divulge any customer information unless it is requested by the customer or under a subpoena or pursuant to any lawful order of a court or other regulatory authority. After these forms or similar ones are signed by the employee; in most cases, he or she is then given a user identification number that allows them to access customer records.

 A survey of the LECs, ATT-C, MCI, Sprint and LDDS revealed that each of these entities has an internal policy of nondisclosure of customer proprietary information. However, there is no provision either state or federal that precludes dissemination of this information or provides for penalties to be imposed on the Company for failure to abide by its internal policy.

 Staff believes that there is a general expectation on the part of customers that their telephone account information will be protected from unauthorized disclosure. This view is consistent with the general notion of privacy granted by Article I, Section 23 of the Florida Constitution. Staff believes that customer proprietary information should be obtained strictly on a need-to-know basis and only by authorized entities.

 Section 364.14, Florida Statutes, provides, in part:

 (2) Whenever the commission finds that the rules, regulations, or practices of any telecommunications company are unjust or unreasonable, or that the equipment, facilities, or service of any telecommunications company are inadequate, inefficient, improper, or insufficient, the commission shall determine the just, reasonable, proper, adequate, and efficient rules, regulations, practices, equipment, facilities, and service to be thereafter installed, observed, and used and shall fix the same by order or rule. (emphasis supplied)

Pursuant to this authority, staff has drafted a set of requirements that will ultimately be proposed as rules, if the Commission agrees. Staff believes that implementing these requirements will not only be a safeguard for consumers, but for telecommunication companies as well. The proposed requirements will strengthen policies that already exist.

 There is great concern that companies may not be enforcing their company specific policies in regard to the treatment of toll records and other proprietary information. There are a number of employees within these companies that have access to customer records to some degree. In order to safeguard the consumer, staff is proposing the following requirements:

 No Telecommunications company shall divulge or in any way disseminate customer proprietary information to any person or entity that is not a certificated telecommunications company without written authorization of the customer to whom the information relates unless the person to whom the information is being divulged is otherwise expressly authorized by Order, Rule, or Statute to receive such information. This prohibition shall be in effect for employees during the time of employment as well as after termination of employment. This provision is not intended to restrict the dissemination of customer proprietary information to law enforcement agencies pursuant to appropriate subpoena or court order.

 Each Telecommunications company shall notify new and current employees of confidentiality practices and procedures. New employees should be required to sign a form stating that they will comply with the above requirement and current employees should sign such a statement within 30 days after the final order in this docket.

 Staff believes this language is appropriate and will be effective. If this recommendation is approved, staff will initiate a rulemaking proceeding.

 Congress has drafted a privacy bill that will amend the Communications Act of 1934, but it has not been passed as of yet.

**ISSUE 2:** Should the order adopting the requirements in Issue 1 be issued as a proposed agency action (PAA) order or should the Commission proceed directly to rulemaking?

**RECOMMENDATION:** The order should be issued as a proposed agency action.

**STAFF ANALYSIS:** If the order is issued as a PAA and no hearing is requested, ratepayer protection is immediately in place.

The rulemaking process will most likely require a minimum of three months even on an expedited basis. Therefore, by proceeding now with a PAA order, if there is no protest to the order, protection will be in place while we go forward with the rulemaking process.

**ISSUE 3:** Should Docket No. 931019-TP be closed?

**RECOMMENDATION:** Yes. This docket should be closed at the end of the protest period if no timely protest is filed.

**STAFF ANALYSIS:** At the conclusion of the protest period, if no protest is filed this docket should be closed. Staff will then proceed to a rulemaking docket to implement the proposed requirements.