



DEPARTMENT OF JUSTICE

Antitrust Division

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Craig L. Caesar, Esq.
McGlinchey Stafford, LLC
643 Magazine Street
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Dear Mr. Caesar:

This letter responds to your request for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Antitrust Division's current antitrust enforcement intentions with respect to a proposal by your client, the National Consumer Telecommunications Data Exchange ("NCTDE"), to expand its current credit information exchange program that is limited to telecommunications carriers to include other types of utilities.

NCTDE is a credit data exchange service, patterned on the services offered by vendors such as Experian and Equifax. Its principal function has been to provide member telecommunications carriers with advance warning about prospective customers who pose a credit risk so that the carriers can protect themselves against incurring bad debt. It has also provides a "skip tracing" service to enable members to track down former customers who did not pay their bills. Membership has been open only to telecommunications carriers. Prior to its establishment in 1997, NCTDE received an affirmative response from the Department of Justice under the Department's Business Review Procedure. NCTDE now proposes to open its membership to other types of utilities, e.g. electric power, gas and water companies. Initially, it would take into membership the members of three regional utility credit information exchanges -- Southeast Online Match Exchange, the Mid-Atlantic Utility Exchange and the New England Exchange. Thereafter, membership would be open to other utilities.

You indicate that the telecommunications carriers and utility firms that would participate in the proposed expanded credit information exchange feel that they could reduce their bad debt or collection losses substantially if they had a more accurate way of predicting whether a new customer was likely to pay its bills. They feel that general credit histories are not a good predictor of telephone or utility credit risk and that by combining credit information from phone companies (who have good telephone records) with similar information from other utilities (who have good records as to physical locations, i.e. addresses) they can reduce their credit losses.

The proposed credit information exchange will function in the following manner: Participating carriers and utilities will submit to Equifax, an independent third-party vendor, data on closed accounts with unpaid balances. Members may then submit requests to the vendor for information about applications for service to determine whether an applicant has recently left another carrier or utility with an outstanding unpaid debt. Each member will make its own decision on whether, or on what protective conditions, it will deal with a residential customer who has failed to meet its contractual obligations to pay another telephone carrier or utility.

In addition to alerting themselves to potential bad payment customers, telecommunications carriers and other utilities want to improve their collection of bad debt. Locating residential consumers responsible for bad debt is known as "skip tracing," and is an important means of reducing unpaid bills and toll fraud. NCTDE will offer its members an additional service to aid in tracing defaulted customers; a carrier or utility owed money by a former customer can ask the third party vendor, Equifax, if a terminated customer who has defaulted on its bill has applied for service with another carrier. The skip trace report, if successful, will contain the customer's current address, and thus will enable the first carrier or utility to trace the customer to a new location and seek recovery.

NCTDE has developed a number of procedures designed to eliminate the risk that the proposed credit information exchange will have any anticompetitive effect. It will exchange data only in electronic or written form; only with regard to closed accounts; and only through the third party vendor. The information to be exchanged through the vendor will not identify the carriers or utilities supplying or requesting information; in fact, there will be no direct communications between members regarding any specific accounts. To alleviate boycott concerns, the proposal provides that no information will be exchanged about consumer accounts, individual members' credit terms or practices, or how each member treats applicants for service that have been identified as having bad debts. Each member will retain the right to reject those customers with bad credit records, or to contract with them, with or without protective measures. Similarly, each member will make a unilateral decision on whether to take collection action against former customers

located through NCTDE's skip tracing service.

NCTDE's by-laws incorporate a "Statement of Compliance with the Antitrust Laws," that contains both general and specific warnings against anticompetitive behavior regarding pricing, terms and conditions of sale, customers, business strategies and marketing plans, and boycotts and refusals to deal. NCTDE will have an annual meeting to discuss the program as well as ad hoc meetings. Written notices will be issued regarding any meeting, and formal minutes will be kept. Counsel for all members are permitted to attend.

Based on the information and assurances that you have provided to us, we do not believe it likely that the proposed membership expansion of NCTDE's credit information exchange will produce any anticompetitive effects. The addition of non-telecommunications utilities to the membership does not require any different analysis or conclusion about likely competitive effect from that reached by the Department in 1997. The information exchange program has been designed with sufficient safeguards that it is not likely to facilitate collusion. The limited amounts of information exchanged are not likely to result in concerted decisions with respect to price or other terms. The information will be exchanged on a "blind" basis and the receiving member will unilaterally determine the terms, if any, on which it will do business with a customer with a bad credit history. Similarly, a member that locates one of its former defaulted customers through the "skip tracing" service will make a unilateral decision as to whether to pursue its rights against the former customer. Finally, the fact that NCTDE will be open on a nondiscriminatory basis to all telecommunications carriers and utilities assuages any concern that NCTDE might give its members a significant unreasonable competitive advantage over rivals.

It is possible that the proposed credit information exchange will have a procompetitive effect. To the extent that the information exchanged allows NCTDE members to better evaluate credit risk and/or increases their ability to collect monies owed them, it could have a procompetitive effect, i.e., it could enhance efficiency and lower operating costs, thereby increasing output.

This letter expresses the Department's current enforcement intentions. In accordance with its normal practice, the Department reserves the right to bring an enforcement action in the future if the actual operation of the proposed information exchange proves to be anticompetitive in any purpose or effect.

This statement is made in accordance with the Department's business review procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this

letter will be made publicly available immediately, and any supporting data will be made publicly available within thirty days of the date of this letter, unless you request that any part of the material be withheld in accordance with Paragraph 10(c) of the business review procedure.

Sincerely,

/s/

Charles A. James
Assistant Attorney General