

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Toll Free Service Access Codes)	CC Docket No. 95-155
)	
Implementation of the Telecommunications Act of)	CC Docket No. 96-115
1996: Telecommunications Carriers' Use of)	
Customer Proprietary Information and Other)	
Customer Information)	
)	
Petition of 800 Response for Declaratory Relief or)	
Further Rulemaking)	

To: The Commission

COMMENTS OF CTIA

CTIA¹ hereby responds to the Wireline Competition Bureau's Public Notice seeking comment on the Petition of 800 Response Information Services LLC for Emergency Declaratory Relief, or in the Alternative, for Rulemaking (Petition).²

¹ CTIA® (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st-century connected life. The association's members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry, and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984.

² Public Notice, *Wireline Competition Bureau Seeks Comment on Petition of 800 Response for Declaratory Relief or Further Rulemaking*, CC Docket No. 95-155, CC Docket No. 96-115, DA 18-1067 (rel. Oct. 18, 2018); Petition of 800 Response Information Services LLC for Emergency Declaratory Relief, or In the Alternative, Petition for Further Rulemaking, CC Docket No. 96-115 (filed Oct. 10, 2018) (Petition).

I. INTRODUCTION AND SUMMARY.

The Petition asks the Commission “to issue a ruling” that the provisions of Section 222 of the Communications Act, governing customer proprietary network information (CPNI), and Section 251, governing interconnection, “do not permit carriers to block interconnection for toll-free calls initiated on their networks, or to otherwise impose upon connecting carriers and providers of toll-free telephone service an obligation to obtain the consent of customers to use their location for purposes of routing their calls to a toll-free number.”³ CTIA and our member companies support efforts to ensure consumers can complete calls to toll-free telephone numbers, but the Commission should dismiss this Petition that effectively asks the Commission to compel commercial mobile radio service (CMRS) providers to share their customer’s location information without any basis in the statute or rules.

Wireless service providers take seriously the importance of protecting their customers’ personal information, including location information, and have long done so under applicable federal and state privacy laws and enforceable self-regulatory codes of conduct. Specifically, wireless providers comply with their obligations to protect CPNI under Section 222 of the Communications Act⁴ and their commitments to abide by CTIA’s Best Practices and Guidelines for Location-Based Services (LBS Guidelines or Guidelines).⁵

³ Petition at i. The Petition also references Section 202 in one instance. *See id.* at 10 (claiming that “[t]he restrictions imposed by major wireless carriers are also unlawfully discriminatory under Section 202”). As discussed further below, Section 202 does not support the Petition’s request.

⁴ 47 U.S.C. § 222.

⁵ CTIA, Best Practices and Guidelines for Location-Based Services, <https://www.ctia.org/the-wireless-industry/industry-commitments/best-practices-and-guidelines-for-location-based-services> (LBS Guidelines).

Wireless providers may enter into private commercial agreements with third-party services to meet customer demand for location-based services (LBS) such as those offered by the petitioner but these agreements are designed to also protect wireless providers' customers' information. Rather than undermine any protections that wireless service providers have established for their customers' information through commercial agreements, the Commission should deny the Petition.

II. THE WIRELESS INDUSTRY TAKES SIGNIFICANT EFFORTS TO PROTECT CONSUMERS' PERSONAL LOCATION INFORMATION.

CTIA's member companies are committed to protecting the privacy of their customers, and have long done so under applicable federal and state privacy laws and enforceable self-regulatory codes of conduct. Of particular relevance, Section 222 imposes an explicit duty on wireless providers to protect the confidentiality of the CPNI that they collect through the provision of telecommunications service, including call location information.⁶ Wireless providers may comply with their obligations under Section 222 and other applicable federal and state privacy laws in a variety of ways. But beyond their legal obligations, CTIA members recognize that protecting the privacy and security of consumer data is a good business practice, and they have strong incentives to earn and maintain consumer trust and loyalty by doing so. To that end, CTIA has offered and maintained LBS Guidelines since 2008.

Among other things, the Guidelines expect LBS providers to obtain user consent to the use or disclosure of location information.⁷ The Guidelines do not specify the form in which consent must be provided, and afford some flexibility with regard to how LBS providers may

⁶ See generally 47 U.S.C. § 222.

⁷ LBS Guidelines § 1 ("LBS Providers must ensure that users consent to the use or disclosure of location information").

obtain consent.⁸ The Guidelines, however, explicitly prohibit reliance on pre-checked boxes, choice mechanisms buried within privacy policies, and uniform licensing agreements.⁹

While CTIA's LBS Guidelines are a set of voluntary best practices, individual wireless service providers may choose to direct third parties seeking access to consumer location information to comply with the Guidelines through private commercial agreements. The Petition, if granted, could undermine these and other efforts to protect consumers' personal location information.

III. THE PETITION LACKS MERIT BECAUSE THE COMMUNICATIONS ACT DOES NOT MANDATE THE DISCLOSURE OF LOCATION INFORMATION.

The Petitioner is a telecommunications carrier that provides toll-free telephone service that has engaged the services of third-party LBS providers that obtain customer location information from wireless carriers and provide it on a commercial basis.¹⁰ The Petition attempts to make the case that provisions of the Communications Act, including Section 251, 202 and 222, require the disclosure of customer location information, but its arguments misstate the law.

Section 251. First, the Petition suggests, without explanation, that protecting customer location information implicates telecommunications carriers' "affirmative obligation to interconnect with the facilities and equipment of other telecommunications carriers."¹¹ Section

⁸ *Id.* § 4.B.1 ("The form of consent may vary with the type of service or other circumstances.... The Guidelines do not dictate the form, placement, terminology used, or manner of obtaining consent as long as the consent is informed and based on notice consistent with the requirements set forth in the Notice section above.").

⁹ *Id.* ("Pre-checked boxes that automatically opt users in to location information disclosure, or, choice mechanisms that are buried within a lengthy privacy policy or a uniform licensing agreement ordinarily would be insufficient to express user consent.").

¹⁰ *See* Petition at 2-4.

¹¹ Petition at 6; *see also id.* at 4.

251 imposes interconnection obligations, but it does not impose an obligation to share the location information sought by the Petition. Neither Section 251 nor the Commission's rules implementing it mentions customer location information,¹² and the Petition cites no precedent finding that Section 251 grants interconnecting carriers any rights to obtain customer location information. As the Petition does not allege any failure to interconnect, Section 251 is not applicable here.

Section 202. The Petition's argument that wireless providers' efforts to protect customer location information violate the nondiscrimination requirement in Section 202 is similarly misplaced.¹³ Section 202's non-discrimination requirement is a common carrier regulation applicable to the provision of telecommunications service.¹⁴ As the materials attached to the Petition make clear, however, toll-free service providers use location information "after the initial routing to a selected service provider;" location information "is not provided in the signaling stream that sets up the toll free call ... but through independent commercial agreements."¹⁵ Thus, the provision of customer location information is not a telecommunications service and Section 202 does not apply to it.

Section 222. The Petition also suggests that Section 222 "makes clear that the limited manner in which 800 Reponses uses [location] CPNI in connection with its provision of

¹² See generally 47 U.S.C. § 251; 47 C.F.R. §§ 51.1 - 51.919.

¹³ See Petition at 10.

¹⁴ Title II common carrier requirements such as Section 202 may be applied only to telecommunications carriers. See, e.g., *Verizon v. FCC*, 740 F.3d 623, 657 (2014).

¹⁵ Petition, Attachment 1: Letter from Thomas Goode, ATIS General Counsel, to Ann Stevens, Deputy Division Chief, Competition Policy Division, Wireline Competition Bureau, FCC, CC Docket No. 95-155, at 2 (filed Apr. 16, 2015); see also Petition, Attachment 3: Geographic Routing of Toll Free Services, at 3 (same).

telecommunication service does not trigger the notification and consent requirements which the Act and the rules set forth.”¹⁶ It subsequently suggests that “[a] corollary of this statutory mandate is that an originating carrier may not impose on a connecting carrier a CPNI approval requirement which does not exist...”¹⁷ This claim is baseless.

Regardless of whether providers’ provision of location information as requested in the Petition would meet the rendering of service exception to customer approval set forth in Section 222(d)(1),¹⁸ nothing in Section 222 *requires* the disclosure of location information to the petitioner; nor does Section 222 restrict carriers from adopting privacy protections beyond what is strictly required by law. Indeed, other provisions of Section 222 require the disclosure of other types of information in certain contexts, namely subscriber list information and information disclosed to emergency service providers.¹⁹ Congress thus knew how to express its intent when it wished Section 222 to compel disclosure of types of consumer information, and it did not do so as to call location information in this context.

Moreover, as discussed in greater detail in Section IV, carriers should be given flexibility to provide their customers with even greater privacy protections that are enacted into law. Reading Section 222(d)(1) as setting a ceiling on the privacy protections wireless providers can set for their customers runs counter to consumers interests in this regard.

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¹⁶ Petition at 7.

¹⁷ *Id.* at 8.

¹⁸ *See* 47 U.S.C. § 222(d)(1) (permitting carriers to use, disclose, or permit access to CPNI to initiate, render, bill, and collect for telecommunications service).

¹⁹ *See* 47 U.S.C. §§ 222(e), (g).

Ultimately, the petitioner is obtaining customer location information from other carriers pursuant to unregulated commercial agreements – not as an interconnecting carrier²⁰ – and there is no legal basis for the Commission to intervene in those agreements as the petitioner suggests. Thus, the Commission should dismiss the Petition for lack of legal justification.

IV. THE COMMISSION SHOULD NOT SET A CEILING ON WIRELESS PROVIDERS' EFFORTS TO PROTECT CONSUMER PERSONAL LOCATION INFORMATION.

The Petition not only rests on a faulty legal foundation, it also would be bad policy. Regardless of whether the provision of call location information as requested in the Petition would be permissible without customer approval, wireless providers take seriously their obligations to protect consumer privacy, such as call location information – both under Section 222 but also under the commitments they have made to consumers. Accordingly, providers should be afforded the flexibility to determine how best to protect the privacy of their customers' information consistent with the risks they believe may be associated with any given disclosure of call location CPNI. For instance, wireless providers may obtain consent to disclose certain location information through an affirmative or implied opt-in, and wireless providers may impose specific obligations through commercial agreements on third parties who may utilize such information in order to protect their customers.

Consistent with Section 222 and privacy policy generally, wireless providers should not be compelled to disclose information about their customers in non-safety-related circumstances. Instead, wireless providers must be allowed to determine what protections are appropriate in each given context, even if such protections go beyond what is required by law.

²⁰ See *supra* note 13 and accompanying text.

V. CONCLUSION.

For the reasons stated above, the Commission should deny the Petition.

Respectfully submitted,

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