

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Toll Free Service Access Codes)	CC Docket No. 95-155
)	
Telecommunications Carrier's Use Of)	CC Docket No. 96-115
Customer Proprietary Network Information)	
And Other Customer Information)	
)	
)	

**REPLY COMMENTS OF SOMOS, INC.
ON PETITION FILED BY 800 RESPONSE INFORMATION SERVICES LLC**

Joel Bernstein
Vice President, Regulatory
and Public Policy
SOMOS, INC.
P.O. Box 8122
Bridgewater, NJ 08807-8122
844-HEY-JOEL (844-439-5635)

Melanie L. Bostwick
Ethan P. Fallon
ORRICK, HERRINGTON & SUTCLIFFE LLP
1152 15th Street, NW
Washington, DC 20005
202-339-8400

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INTRODUCTION

The comments in this proceeding make clear what Somos explained: location-based Toll-Free services are critically important to subscribers, the public, and the industry, and these services are severely threatened if Toll-Free providers cannot obtain access to reliable information about the location of wireless callers. The comments also reveal no legal obstacle to this access; rather, as Somos explained, the Commission can and should make clear that disclosure of coarse location data for routing and billing of Toll-Free services is compliant with Section 222. The comments also make clear that everyone, both wireless providers and Toll-Free providers alike, takes seriously the need to protect consumer privacy. But this privacy is not threatened by Toll-Free service providers' use of coarse location data about the wireless caller who chose to place an individual call. On the contrary, these providers typically have in place policies and safeguards that comply with the voluntary best practices guidelines established by CTIA. To the extent they do not, Somos reiterates its suggestion that the Commission encourage the Toll-Free industry to develop similar guidelines.

In order to properly balance consumer privacy interests with the public and industry interest in geographically based Toll-Free services, the Commission should take this opportunity to clarify the law in this area. Should the Commission choose to do so by rulemaking, it might rely on the CTIA guidelines as a safe harbor for the provision of location data to Toll-Free service providers in the interim. And in all events, the Commission should encourage industry cooperation to ensure that the public is both protected and provided with the substantial benefits of location-based Toll-Free services.

DISCUSSION

I. There Is Consensus That Section 222(d)(1) of the Communications Act Permits Disclosure of CPNI To Render Location-Based Toll-Free Services

As Somos suggested in its opening comments, the Commission should use this proceeding to issue a declaratory ruling and clarify that Section 222(d)(1) permits disclosure of a caller's coarse location information to a toll-free service provider who will use that information only to render and bill for the completion of the call.¹ Other commenters to this action agree that Section 222(d)(1) applies to location-based Toll-Free services, and no commenter has yet suggested otherwise.² For the reasons set forth in Somos' opening comments, the Commission can and should inform industry actors on how to best protect customer data by confirming that Section 222's provisions apply to location-based Toll-Free services.³ As CTIA's comments reflect, the wireless industry takes seriously its obligations to comply with the CPNI protection obligations of Section 222.⁴ By clarifying the scope of those obligations, the Commission can assist the industry in reaching solutions that will protect consumer privacy while promoting the location-based services—including location-based Toll-Free services — on which consumers depend.

II. Toll-Free Service Providers Are Following—Or Could Follow—CTIA's LBS Guidelines

For its wireless carrier members, CTIA developed best practices and guidelines for providing location-based services. These guidelines are "intended to promote and protect user

¹ Comments of Somos, Inc. (filed Nov. 20, 2018) at 15.

² *See, e.g.*, Comments of Ringboost.com (filed Nov. 20, 2018) at 5-6; *see also* Comments of CTIA at 6 (filed Nov. 20, 2018) (assuming without disagreeing that "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)").

³ Comments of Somos, Inc. (filed Nov. 20, 2018) at 12-15.

⁴ Comments of CTIA (filed Nov. 20, 2018) at 7.

privacy as new and exciting Location-Based Services are developed and deployed.”⁵ They are a set of “voluntary best practices” which wireless providers may choose to follow and which they may direct LBS providers to follow in order to access customer location information.⁶ Based on Somos’ understanding, many (if not all) Toll-Free service providers are already complying with these Guidelines when providing location-based routing of Toll-Free calls. And they are doing so while using customer location information in a much more limited and less invasive manner than many other LBS providers. The Guidelines thus present an opportunity for the industry to come to agreement on the provision of location information to Toll-Free service providers. Furthermore, to the extent the Commission determines to engage in rulemaking regarding the disclosure of location data to Toll-Free providers, it may wish to rely on the CTIA Guidelines as a form of interim “safe harbor.”

To begin with, location-based Toll-Free services already appears to fall within the “Scope of Coverage” of the CTIA Guidelines. The Guidelines purport to apply “whenever location information is linked by the LBS provider to a specific device (e.g., linked by phone number[]).”⁷ For location-based Toll-Free services, the caller’s coarse location information, based on the nearest cell tower, is linked with his or her phone number in order to route the call.

Location-based Toll-Free providers also comply with both the spirit and the letter of the Guidelines. The Guidelines rely on two fundamental principles: user notice and consent. For user notice, the Guidelines require LBS Providers to ensure that potential users are informed

⁵ CTIA, *Best Practices and Guidelines for Location-Based Services* ¶ 1, <https://www.ctia.org/the-wireless-industry/industry-commitments/best-practices-and-guidelines-for-location-based-services> (“CTIA Guidelines”).

⁶ Comments of CTIA (filed Nov. 20, 2018) at 4.

⁷ CTIA Guidelines ¶ 3.

about how their location information is to be used, disclosed, and protected.⁸ But the Guidelines do not dictate the form, placement, or manner for obtaining consent from the consumer. The Guidelines do say, however, that consent may be implicit, like “when users request a service that obviously relies on the location of their device.”⁹ Customers may also give consent “through an IVR system or any other system reasonably calculated to confirm consent.”¹⁰

Toll-Free service providers are already meeting (or exceeding) these standards. As to notice, Somos understands that most Toll-Free service providers already provide a recorded notice when a customer dials a Toll-Free number that is subject to geographic routing or geographic restrictions. This message provides notice to the consumer that location-based data is being shared for routing purposes, consistent with the Guidelines’ requirement that “LBS Providers must ensure that potential users are informed about how their location information will be used.”¹¹ Moreover, unlike many LBS providers, Toll-Free service providers do not re-use the customer’s location information after the original call is placed and billed; this use therefore implicates fewer privacy concerns than many of the other services that are covered by CTIA’s Guidelines.¹²

In addition to notice, Toll-Free service providers comply with the consent aspects of the Guidelines. As described in Somos’ opening comments, when a customer calls a Toll-Free

⁸ *Id.* ¶ 4(A).

⁹ *Id.* ¶ 4(B)(1).

¹⁰ *Id.*

¹¹ *Id.* ¶ 4(A); *see also id.* (“LBS Providers may use written, electronic or oral notice so long as users have an opportunity to be fully informed of LBS Providers’ information practices.”).

¹² *Compare, e.g., id.* (contemplating that an LBS might entail “frequent sharing” of a customer’s location information and thus require “periodic[] remind[ers]” that the information is being shared).

number, the caller is attempting to reach a business or service that is geographically appropriate for their current location. Callers therefore already have an implicit understanding that location-based data is being used to accurately route their call.¹³ As the Guidelines explain, implicit consent occurs “when users request a service that obviously relies on the location of their device.”¹⁴ Even beyond this implicit consent, consumers are easily able to opt out of the sharing of their location information; after receiving notice that their location will be used, the caller often is provided an explicit choice to opt out, and always has the option to do so by simply terminating the call.¹⁵ This approach is “reasonably calculated to confirm consent” under the circumstances, consistent with CTIA’s Guidelines.¹⁶

The CTIA Guidelines also contain safeguard provisions regarding the security and retention of consumers’ location data.¹⁷ It is Somos’ understanding that many Toll-Free service providers have such safeguards in place, particularly since they are using callers’ location data only to route and bill for individual calls and not for any further purpose (such as marketing). Furthermore, as Somos proposed, this is an area where the Toll-Free industry can develop its own best practices to add detail to the basic concepts contemplated by the CTIA safeguards.¹⁸

In sum, far from “undermin[ing]” the wireless industry’s “efforts to protect consumers’ personal location information,”¹⁹ the Commission can uphold those efforts by providing clarity on the ability of wireless carriers to disclose location data to Toll-Free service providers for call

¹³ Comments of Somos, Inc. (filed Nov. 20, 2018) at 16.

¹⁴ CTIA Guidelines ¶ 4(B)(1).

¹⁵ Comments of Somos, Inc. (filed Nov. 20, 2018) at 9, 16.

¹⁶ See CTIA Guidelines ¶ 4(B)(1).

¹⁷ See *id.* ¶ 4(C).

¹⁸ Comments of Somos, Inc. (filed Nov. 20, 2018) at 16-17.

¹⁹ Comments of CTIA (filed Nov. 20, 2018) at 4.

routing and billing purposes. Those providers typically are already complying with the policies and principles that the wireless industry believes are necessary and appropriate. To the extent they are not, the industry can work to achieve widespread implementation of the CTIA Guidelines or similar protections. Furthermore, if the Commission chooses to engage in further rulemaking on this issue, it could rely on compliance with the CTIA Guidelines as a form of “safe harbor” for the provision of location data to Toll-Free providers while such a proceeding is pending. This action would be minimally disruptive given the existing protections in place for location-based Toll-Free services.

III. Wireless Carriers Should Not Impose Onerous Burdens on Sharing Location-Based Data To Providers Rendering Toll-Free Services

CTIA may be correct, as a legal matter, that Section 222(d)(1) sets a floor and not a ceiling on carriers’ protection of their customers’ privacy.²⁰ But it is wrong to suggest that encouraging or requiring the disclosure of coarse location data for purposes of providing location-based Toll-Free services would be bad policy.²¹ On the contrary, several comments on the Petition make clear what Somos explained in its own opening comments: that location-based Toll-Free services benefit Toll-Free subscribers, consumers, and the industry as a whole, and that these services will not be viable if wireless carriers prohibit access to their customers’ location information.²² Allowing wireless carriers to forbid or severely restrict access to this information is at least functionally (if not legally) sanctioning a failure to interconnect, because wireless-originated Toll-Free calls to geographically routed or restricted numbers cannot be connected to

²⁰ Comments of CTIA (filed Nov. 20, 2018) at 6.

²¹ Comments of CTIA (filed Nov. 20, 2018) at 7.

²² See, e.g., Comments of Somos, Inc. (filed Nov. 20, 2018) at 9-12; Comments of Ringboost.com (filed Nov. 20, 2018) at 5-6; Comments of the Alliance for Telecommunications Industry Solutions (filed Nov. 19, 2018) at 3-4; Comments of Windstream Services, LLC (filed Oct. 24, 2018) at 1.

their intended destination—or will not be, if frustrated and confused callers give up when faced with complex opt-in procedures.

It makes little policy sense to inhibit location-based Toll-Free services when providers are already acting in accord with the guidelines established by the wireless industry for the protection of customers.²³ And it makes particularly little sense to do so when these providers are using location information in a significantly more limited and less invasive way than so many of the LBS providers to whom the wireless carriers are allowing access. Toll-Free service providers indirectly acquire location-based data that originates from a cell tower.²⁴ This is fundamentally different from acquiring data directly from a consumer's mobile device, as many LBS providers do.²⁵ The only information it provides is an approximate location of a caller at a single point in time. Tower location information is divorced from a handset and has no ability to collect any other information from the caller's device, let alone to do so on an ongoing basis. This is in stark contrast to other location-based services that acquire private data directly from the handheld device, such as movement patterns of the subscriber, website visits, or other private information.²⁶

As discussed in its initial comments, Somos believes location data should be treated commensurate with the privacy interests at stake. Somos encourages the Commission to draw a

²³ See *supra* Part II.

²⁴ Comments of Somos, Inc. (filed Nov. 20, 2018) at 6-8.

²⁵ See, e.g., CTIA Guidelines Examples 2-3.

²⁶ See, e.g., Vandita Grover, *What is Geolocation and How is it Being Used in Targeting and Advertising?*, MARTECH ADVISOR (Nov. 1, 2018), <https://www.martechadvisor.com/articles/geolocation/geolocation-for-social-targeting-and-advertising/>; Dieter Holger, *How 'Free' Wi-Fi Hotspots Can Track Your Location Even When You Aren't Connected*, PC WORLD (Nov. 1, 2018), <https://www.pcworld.com/article/3315197/privacy/free-wi-fi-hotspots-can-track-your-location-even-when-you-arent-connected.html>.

distinction between coarse and precise location-based data.²⁷ Customer interests and industry concerns can be adequately balanced by distinguishing these two types of data because they implicate different privacy interests and should therefore be treated differently. But wireless carriers are imposing unduly harsh restrictions when providing coarse location data to Toll-Free service providers, especially as compared to the restrictions applicable to the more precise information disclosed to other types of LBS providers.

The Commission should discourage wireless providers from placing onerous burdens on providing location-based data to Toll-Free service providers. The rendering of location-based Toll-Free services is a public good that serves an important purpose. Imposing unreasonable burdens on Toll-Free service providers will negatively affect consumers, Toll-Free subscribers, and the Toll-Free industry as a whole.

CONCLUSION

Toll-Free service providers are taking care to protect consumer privacy and choice when they use coarse location data for the limited purposes of rendering and billing for Toll-Free service. There should be no legal obstacle to their ability to do so. Imposing additional and cumbersome restrictions on the use of this data undermines the vitality and usefulness of Toll-Free numbers and is unnecessary to protect consumer privacy. The Commission should confirm that wireless carriers can both protect consumer privacy interests and provide location-based information without imposing additional burdensome requirements on Toll-Free providers.

²⁷ Comments of Somos (filed Nov. 20, 2018) at 15-16.

Respectfully submitted,

Joel Bernstein
Vice President, Regulatory
and Public Policy
SOMOS, INC.
P.O. Box 8122
Bridgewater, NJ 08807-8122
844-HEY-JOEL (844-439-5635)

/s/Melanie L. Bostwick
Melanie L. Bostwick
Ethan P. Fallon
ORRICK, HERRINGTON & SUTCLIFFE LLP
1152 15th Street, NW
Washington, DC 20005
202-339-8400

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