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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Telecommunications Act of 1996	)	CC Docket No. 96-115
	)	
Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	)	

REPLY OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

The Personal Communications Industry Association ("PCIA"),[1] hereby submits its reply to the oppositions filed, in response to the petitions for reconsideration filed, regarding the Second Report and Order in the above captioned proceeding.[2] As noted in each of the twenty-seven petitions for reconsideration filed in response to the *Second CPNI Order*, as well as virtually all of the responses (or "oppositions") to the petitions for reconsideration, the Commission's Customer Proprietary Network Information ("CPNI") rules harm both the

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[1] PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Messaging Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

[2] *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, 13 FCC Rcd 8061, CC Docket No. 96-115 (1998) (Second Report and Order and Further Notice of Proposed Rulemaking) ("*Second CPNI Order*").

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American consumer and carriers by frustrating customer expectations and by imposing unnecessary costs upon service providers. Accordingly, PCIA respectfully reiterates its request that the Commission, at the very least, reconsider its decision to restrict the use of CPNI to: (1) market customer premises equipment ("CPE") that is integral to wireless services; (2) market information services that are inextricably intertwined with wireless services; and (3) win back customers who have terminated service.[3]

I. INTRODUCTION AND BACKGROUND

In enacting the Telecommunications Act of 1996 ("the Act"), Congress crafted Section 222, which established rules for carrier use and disclosure of CPNI and other customer information obtained by carriers in their provision of telecommunications services. On February 26, 1998, the Commission released its *Second CPNI Order* which implemented Section 222 of the Act. Among other things, the *Second CPNI Order*: (1) permits carriers to use CPNI, without customer approval, to market offerings that are related to, but limited by, the customer's existing service relationship with their carrier; (2) requires carriers to obtain written, oral, or electronic customer approval before carriers may use CPNI to market service outside the customer's existing service relationship; and (3) requires carriers to provide a one-time notification of customers' CPNI rights prior to any solicitation for approval. Following the release of the *Second CPNI Order*, the Cellular Telecommunications Industry Association ("CTIA") filed a

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[3] In a separate petition, PCIA has asked the Commission to forbear from enforcing against all wireless carriers Rules 64.2005(b)(1) and 64.2005(b)(3) which govern the use of CPNI by carriers. PCIA also asked the Commission to forbear from enforcing Rules 64.2009(a) and (c) which require a customer's CPNI approval status to be shown on the "first screen" of customer service databases and the creation and maintenance of an electronic audit trail regarding access to a customer's CPNI. *See Petition for Forbearance of the Personal Communications Industry Association*, CC Docket No. 96-115, DA 98-836 (filed June 29, 1998) (*"PCIA Petition for Forbearance"*).

request for deferral and clarification.[4] Five days later, GTE filed a petition for forbearance from the application of or, alternatively, for stay of the Commission's new CPNI rules.[5] In response to these filings, the Commission established a pleading cycle[6] and received comments and reply comments on both the CTIA request and the GTE petition.[7] On May 26, 1998, twenty-seven parties, including PCIA,[8] filed petitions for reconsideration of the *Second CPNI Order*. Oppositions to these petitions for reconsideration were filed on June 25, 1998. As noted earlier, on June 29, 1998, PCIA filed its own petition for forbearance in this proceeding.[9]

Once again, PCIA urges the Commission to be fully cognizant of the detrimental repercussions its CPNI rules will have on the American consumer and on the day-to-day business operations of wireless carriers. At the very least, PCIA should reconsider its *Second CPNI Order* to: (1) avoid unnecessarily disrupting the business plans and marketing campaigns of CMRS providers; and (2) properly balance the interests of both consumers and carriers in implementing the new CPNI rules.

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4 CTIA Request for Deferral and Clarification, CC Docket No. 96-115 (filed Apr. 24, 1998).

5 *See* GTE Petition for Temporary Forbearance or, in the Alternative, Motion for Stay, CC Docket No. 96-115 (filed Apr. 29, 1998).

6 *Public Notice*, Pleading Cycle Established for Comments on Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Information Request for Deferral and Clarification, CC Docket 96-115, DA 98-836 (May 1, 1998).

7 Twenty-three out of the twenty-four comments filed in response to the *Public Notice* indicated some form of stay, deferral, or forbearance from the Commission's CPNI rules.

8 *See Petition for Reconsideration of the Personal Communications Industry Association*, CC Docket No. 96-115, DA 98-836 (filed May 26, 1998) (*"PCIA Petition for Reconsideration"*).

9 *See PCIA Petition for Forbearance.*

II. THE COMMISSION SHOULD RECONSIDER AND MODIFY ITS CPNI RULES TO PERMIT THE USE OF CPNI TO MARKET CPE AND INFORMATION SERVICES

Nearly every party that commented on the petitions for reconsideration asserted that the Commission must modify its CPNI rules to permit the use of CPNI for the integrated marketing of wireless services, CPE, and information services.[10] Thus far, in the CMRS industry, there has been virtually no marketing boundaries between telecommunications services, such as paging and wireless telephony; CPE, such as pagers and PCS handsets; and information services, such as voicemail and electronic mail. As a result, wireless consumers have enjoyed one-stop shopping for all of their wireless communications services and equipment. The Commission's current attempt to restructure the marketing practices of the entire telecommunications industry will immediately have an adverse economic impact on the wireless industry and could substantially impair the industry's future growth. For carriers, the new CPNI rules will result in the unnecessary obligation of having to get customer approval before marketing compatible CPE or bundled services. For consumers, the new CPNI rules will result in an unneeded inconvenience since many customers will likely end up having to shop separately for CPE or for a particular service offering. At a minimum, consumers will have to waste their time giving the requisite customer approval.

III. THE COMMISSION SHOULD PERMIT THE USE OF CPNI IN A CARRIER'S WIN BACK EFFORTS

Those commenting on the petitions for reconsideration unanimously argue that the Commission should rescind Rule 64.2005(b)(3) which prohibits the use of CPNI to win back

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[10] *See e.g.*, AT&T at 5-10; GTE 3-6; AirTouch 9-12.

customers, as it applies to competitive CMRS providers.[11] Even MCI, which advocates the enforcement of the win back prohibition rules against ILECs, because of anti-competitive concerns stemming from the monopoly status of ILECs, argues against the Commission's implementation of the win back rule, as it applies to competitive CMRS providers.[12] Rule 64.2005(b)(3) is contrary to one of the fundamental objectives of the Telecommunications Act of 1996 -- increased competition. As PCIA noted in its petition for forbearance, "[w]in back marketing represents competition in its purest, head-to-head form."[13] Win back allows consumers to be educated about new pricing and service options and forces carriers to vie against each other for business. Furthermore, due to the competitive nature of the CMRS industry, consumers are aware of the leverage they have in choosing a carrier and expect that carriers will have to compete for their business.[14] Ultimately, win back results in lower rates for consumers. In short, because the win back rule is neither consistent with the expectations of wireless consumers and everyday business practices in the wireless industry or elsewhere, nor mandated by Section 222 of the Act, it merits reconsideration.

IV. CONCLUSION

If implemented, the Commission's CPNI rules will not only needlessly cause the wireless industry to completely overhaul its marketing practices, they will also have a disastrous effect on

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[11] *See e.g.*, SBC at 19-21; Arch at 4-5; GTE at 9.

[12] *See* MCI at 15-16.

[13] *See PCIA Petition for Forbearance* at 15.

[14] According to one industry report, wireless churn rates are now up to thirty percent per year in the United States and will soon likely climb to forty percent. Moreover, thirty percent of all churn occurs within the first six months of gaining a subscriber. *Anderson Consulting Communications Industry Segment Study* (August 1997).

the industry's economic well-being. In drafting Section 222 of the Act, Congress unquestionably intended to protect the privacy of the telecommunications customers. Unfortunately, in the *Second CPNI Order*, the Commission's attempt to protect customer privacy comes at the expense of competition and the overall economic vitality of the wireless industry. For the aforementioned reasons, the Commission should, at the very least, reconsider its decision to restrict the use of CPNI to: (1) market customer premises equipment ("CPE") that is integral to wireless services; (2) market information services that are inextricably intertwined with wireless services; and (3) win back customers who have terminated service.

Respectfully submitted,

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