

FCC MAIL SECTION

Federal Communications Commission

FCC 98-239

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DISPATCHED BY

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

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

**ORDER**

**Adopted:** September 23, 1998

**Released:** September 24, 1998

By the Commission:

1. On February 26, 1998, the Commission released an Order ("*CPNI Report and Order*") promulgating regulations to implement the statutory obligations of section 222 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, which was enacted to protect the confidentiality of customer proprietary network information (CPNI).<sup>1</sup> In that order, the Commission established January 26, 1999 as the deadline by which all telecommunications carriers must implement effective electronic safeguards to protect against unauthorized access to CPNI. For the reasons discussed below, we extend that deadline.

**I. BACKGROUND**

2. In the *CPNI Report and Order*, the Commission concluded that "all telecommunications carriers must establish effective safeguards to protect against unauthorized access to CPNI by their employees or agents, or by unaffiliated third parties."<sup>2</sup> Specifically, the Commission required that carriers develop and implement software systems that "flag" customer service records in connection with CPNI and that carriers maintain an electronic

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<sup>1</sup> *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket Nos. 96-115 and 96-149, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 (1998) (*CPNI Report and Order*), recon. pending.

<sup>2</sup> *Id.* at 8194, para. 191.

audit mechanism ("audit trail") that tracks access to customer accounts.<sup>3</sup> The Commission also required that carriers' employees be trained as to when they can and cannot access customers' CPNI; that carriers establish a supervisory review process that ensures compliance with CPNI restrictions when conducting outbound marketing; and that each carrier submit a certification signed by a current corporate officer attesting that he/she has personal knowledge that the carrier is in compliance with our requirements on an annual basis.<sup>4</sup> Because the Commission anticipated that carriers would need time to conform their data systems and operations to comply with the software flags and electronic audit mechanisms required by the Order, enforcement of these safeguards was deferred until eight months from when the rules became effective, specifically January 26, 1999.<sup>5</sup>

3. Following the release of the *CPNI Report and Order*, several petitioners sought reconsideration of a variety of issues, including the decision to require carriers to implement the use of software flags and audit trails.<sup>6</sup> We are currently reviewing these petitions. In addition, a number of carriers, representing virtually the entire industry affected by the CPNI rules, expressed concern about meeting the January deadline.<sup>7</sup> GTE has also proposed some alternative methods of implementing safeguards that GTE claims will accomplish the goals of the Act without unduly burdening the industry.<sup>8</sup>

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<sup>3</sup> *Id.* at 8198-99, paras. 198-99.

<sup>4</sup> *Id.* at 8198-8200, paras. 198-202.

<sup>5</sup> *Id.* at 8200, para. 202.

<sup>6</sup> 360 Communications, ALLTEL Communications, Inc., Ameritech, AT&T, Bell Atlantic, BellSouth, the Competitive Telecommunications Association, Frontier Corporation, GTE, the Independent Alliance, LCI, MCI, the National Telephone Cooperative Association, Omnipoint, Sprint, TDS, and the United States Telephone Association filed petitions for reconsideration which requested that the Commission reexamine the electronic safeguard requirements.

<sup>7</sup> Letter from Jay Kitchen, Personal Communications Industry Association; Roy M. Neel, United States Telephone Association; Thomas E. Wheeler, Cellular Telecommunications Industry Association; Russell Frisby, Competitive Telecommunications Association; John N. Rose, Organization for the Protection and Advancement of Small Telephone Companies; John S. O'Neill, National Rural Telecommunications Association; Kathleen A. Kaercher, Small Business in Telecommunications; David W. Zesiger, Independent Telephone & Telecommunications Alliance; Jennifer Durst-Jarrell, America's Carriers Telecommunications Association; and L. Marie Guillory, National Telephone Cooperative Association, to William E. Kennard, Susan Ness, Michael K. Powell, Harold Furchtgott-Roth, and Gloria Tristani, FCC (July 20, 1998). In addition, BellSouth brought the issue before Commission staff in an *ex parte* presentation regarding the implementation of the safeguards on July 21, 1998. See Letter from Ben G. Almond, BellSouth, to Magalie Roman Salas, Secretary, FCC (July 21, 1998).

<sup>8</sup> Letter from Darlene P. Richeson, GTE, to Magalie Roman Salas, Secretary, FCC (Aug. 18, 1998) (GTE Aug. 18 *Ex Parte*).

## II. DISCUSSION

4. We conclude that it serves the public interest to extend the deadline by which we will begin to enforce our rules requiring software flags and electronic audit mechanisms so that we may consider recent proposals to tailor our requirements more narrowly and to reduce burdens on the industry while serving the purposes of the CPNI rules. As an initial matter, we note that all segments of the industry unanimously oppose these requirements as adopted. We emphasize that the circumstances presented here are both unique and compelling. We recognize that it will take time and effort to implement these requirements, and we believe that postponement of compliance until the Commission provides additional guidance may promote more efficient and effective deployment of resources spent on meeting the new CPNI requirements set forth in the statute and our implementing rules.<sup>9</sup> By delaying the date of enforcement until after the Commission acts upon reconsideration petitions, parties will have the opportunity to comment on GTE's proposed alternatives or make proposals of their own.<sup>10</sup>

5. We emphasize that this extension of time is only temporary and that ultimately carriers will be required to comply with whatever electronic safeguards the Commission deems appropriate in this proceeding. We recognize that software flags and electronic audit mechanisms may be more costly to implement when older systems are involved. To the extent that new systems are being deployed during the pendency of the reconsideration petitions, however, we expect that carriers will install electronic flags and audit trails at the time the system is deployed in order to avoid the increased cost of having to retrofit systems in the future to come into compliance. We also note that this extension applies only to the electronic safeguards requirement, and that compliance with the rest of the rules elaborated in the *CPNI Report and Order* is still required. In particular, our action in this Order does not relieve carriers of the underlying obligation to use CPNI in accordance with section 222 and the Commission's implementing rules.

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<sup>9</sup> See, e.g., Letter from Darlene P. Richardson, GTE, to William E. Kennard, Chairman, FCC (Aug. 3, 1998) (\$42 million for development and an additional \$17 million annually in recurring costs); Letter from Robert T. Blau, BellSouth, to William E. Kennard, Chairman, FCC (Aug. 7, 1998) (at least \$75 million over 5 years); Letter from Jill Canfield, NTCA, to Magalie Roman Salas, Secretary, FCC (Aug. 3, 1998) (\$16-167 per line); Letters from Michael B. Fingerhut, Sprint, to Magalie Roman Salas, Secretary, FCC (Aug. 10, 1998 and Aug. 13, 1998) (\$23.5 million to implement the flagging and audit requirements, and at least an additional \$8 million to obtain computer capacity); Letter from Pamela J. Riley, AirTouch Communications, to Magalie Roman Salas, Secretary, FCC (Aug. 4, 1998); Letter from Peter D. Shields and Stephen J. Rosen, Wiley, Rein and Fielding; and Patricia A. Gray, MobileMedia Corp., to William E. Kennard, Susan Ness, Michael K. Powell, Harold Furchtgott-Roth, and Gloria Tristani, FCC (Aug. 6, 1998); Letter from James W. Spurlock, AT&T, to Brent Olson, attorney, FCC (Aug. 28, 1998) (\$621 million in year one to comply with electronic audit trail and first screen requirements); Letter from Dale (Zeke) Robertson, SBC, to William E. Kennard, Susan Ness, Michael Powell, Harold Furchtgott-Roth, and Gloria Tristani, FCC (Sep. 4, 1998) (over \$54 million for initial development, \$40-60 million per year for annual maintenance of non-marketing decision support system databases, and \$900 million for ongoing marketing decision support system databases).

<sup>10</sup> See GTE Aug. 18 *Ex Parte*.

**III. ORDERING CLAUSES**

6. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), and 303(r), and section 1.429(k) of the Commission's rules, 47 C.F.R. § 1.429(k), that we will not seek enforcement actions against carriers regarding compliance with the CPNI software flagging and audit trail requirements as set forth in 47 C.F.R. §§ 64.2009(a) and (c) until six months after the release date of the Commission's order on reconsideration addressing these issues in CC Docket No. 96-115.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas  
Secretary