

Before the
Federal Communications Commission
Washington, DC 20554

RECEIVED

NOV 9 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Telecommunications)
Act of 1996)
)
Telecommunications Carriers' Use of)
Customer Proprietary Network Information)
and Other Customer Information)

CC Docket No. 96-115

**PETITION FOR RECONSIDERATION OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA"),¹ hereby respectfully submits its Petition for Reconsideration regarding the Commission's Order in the above-captioned docket staying the application of the mechanized customer proprietary network information ("CPNI") safeguards until the Commission has ruled on the pending petitions for reconsideration.² As described below, until the Commission rules on these reconsideration

¹ PCIA is an international trade association established to represent the interests of both the commercial and private mobile radio service communications industries and the fixed broadband wireless industry. PCIA's Federation of Councils includes: the Paging and Messaging Alliance, the Broadband PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, the Mobile Wireless Communications Alliance, and the Wireless Broadband Alliance. As the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 MHz 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 FCC licensees.

² *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information* (Order), CC Docket No. 96-115 (Sept. 24, 1998), 63 Fed. Reg. 54379 (October 9, 1998) ("Stay Order").

No. of Copies rec'd
List A B C D E

0+11

680532

petitions, carriers deploying new customer service and billing software should not be required to install the electronic flags and audit trails detailed in the Commission's rules.

I. INTRODUCTION

On February 26, 1998, the Commission released a Second Report and Order in this docket to implement Section 222 of the Communications Act of 1934, as amended ("Communications Act"), which addresses carrier use of customer proprietary network information.³ In pertinent part, the *Second CPNI Order* required telecommunications carriers to "establish effective safeguards to protect against unauthorized access to CPNI by their employees or agents, or by unaffiliated third parties."⁴ Among these provisions are the following mechanized safeguards: (1) carriers must "develop and implement software that indicates within the first few lines of the first screen of a customer's service record the CPNI approval status and reference the customer's existing service subscription;"⁵ and (2) carriers must "maintain an electronic audit mechanism that tracks access to customer accounts."⁶

PCIA and numerous other parties filed petitions for reconsideration,⁷ petitions for forbearance,⁸ and *ex parte* letters⁹ seeking review of many of the requirements set forth in the

³ *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information* (Second Report and Order and Further Notice of Proposed Rulemaking), 13 FCC Rcd 8061 (1998), 63 Fed. Reg. 20326 (April 24, 1998) ("*Second CPNI Order*").

⁴ *Id.*, ¶ 191.

⁵ 47 C.F.R. § 64.2009(a).

⁶ 47 C.F.R. § 64.2009(c).

⁷ *See, e.g.*, PCIA Petition for Reconsideration, CC Docket 96-115 (filed May 26, 1998).

⁸ *See, e.g.*, PCIA Petition for Forbearance, CC Docket 96-115 (filed June 29, 1998).

Second CPNI Order, including the aforementioned mechanized safeguards. In these submissions, PCIA stressed that the mechanized safeguards were not required by Section 222, placed undue economic burdens on carriers, and were unnecessary to protect customer privacy.

In its instant *Stay Order*, the Commission generally stayed the application of the software flags and electronic audit mechanisms until six months after the Commission acts on the pending reconsideration petitions.¹⁰ In granting this stay, however, the FCC specifically stated that, “[t]o the extent that new systems are being developed during the pendency of the reconsideration petitions, [carriers are required to] install electronic flags and audit trails at the time the system is deployed.”¹¹ Because it requires carriers to expend resources meeting regulatory requirements that might prove to be temporary and discriminates against new carriers, PCIA seeks reconsideration of this requirement.

II. UNTIL THE COMMISSION RESOLVES THE PENDING PETITIONS FOR RECONSIDERATION, REQUIRING NEW SOFTWARE TO MEET THE MECHANIZED SAFEGUARD REQUIREMENTS IS WASTEFUL OF CARRIER RESOURCES AND DISCRIMINATES AGAINST NEW CARRIERS

PCIA generally applauds the Commission’s well-reasoned decision to stay its mechanized safeguard requirements pending reconsideration. As pointed out in the *Stay Order*, because it will take a great deal of time and effort on the part of carriers to implement these requirements, postponement of the compliance date until the Commission clarifies its rules “may

(...Continued)

⁹ See Letter from Jay Kitchen, President, PCIA, *et al.* to William E. Kennard, Susan Ness, Michael K. Powell, Harold Furchtgott-Roth, and Gloria Tristiani, FCC Commissioners (July 20, 1998).

¹⁰ *Stay Order*, ¶ 6.

¹¹ *Id.*, ¶ 5.

promote more efficient and effective deployment of resources spent on meeting the new CPNI requirements.”¹² In addition, the Commission notes that by delaying the enforcement date until after the Commission acts on reconsideration petitions, “parties will have the opportunity to comment on GTE’s proposed alternatives or make proposals of their own.”¹³

This rationale for staying the enforcement of the mechanized safeguard requirements applies with equal force to *new* customer billing and service systems that are being developed and deployed during the pendency of the reconsideration petitions. Logic and fair, consistent application of its policies require the Commission to reconsider its decision to direct carriers deploying these new systems during the stay period to meet the mechanized safeguard requirements. Critically, by the Commission’s own admission, the mechanized safeguards promulgated on reconsideration might differ from those set forth in Sections 64.2009(a) and (c) as they now stand.¹⁴ By requiring new systems to deploy the previously promulgated safeguards, the Commission is, in effect, prejudging the issue. In fact, the Commission has stated that it is actively reviewing proposed alternatives. It is thus unnecessarily wasteful of carrier resources to require carriers to comply with the old mechanized safeguard requirements for newly deployed systems when these requirements may be substantially altered.

The Commission’s *Stay Order* also has the unintended effect of interfering with the business plans of new market entrants, which, by necessity, must deploy new customer billing and provisioning software. In particular, these new carriers will be required to implement

¹² *Id.*, ¶ 4.

¹³ *Id.*

¹⁴ *Id.*

systems that meet the current software flags and electronic audit requirements, and might then be required to either retrofit this software, or install new software to meet whatever new requirements are promulgated. These economic burdens will place such new market entrants at a competitive disadvantage as compared to established carriers, which will benefit from the Commission's stay.

Further, the Commission has already given telecommunications carriers clear notice 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."¹⁵ This notice is sufficient to inform new carriers and carriers developing new customer billing and service systems that they must eventually comply with the specific safeguards that are incorporated into the Commission's final rules.

PCIA understands that the Commission is eager to complete its Congressionally-mandated task of implementing Section 222. In its attempt to conclude this proceeding, the Commission must, however, be careful not to impose unnecessary and anti-competitive burdens on carriers deploying new software and carriers deploying entirely new networks. This is especially true given that the mechanized safeguards are not required by Section 222. Therefore, having made the wise decision to stay the enforcement of these requirements until it rules on the petitions for reconsideration, the Commission should extend this stay to *all* carrier billing and provisioning software, including that deployed during the pendency of the reconsideration petitions.

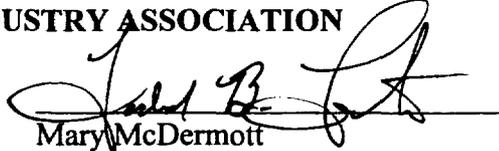
¹⁵ *Id.*, ¶ 5.

III. CONCLUSION

The Commission should reconsider the portion of its *Stay Order* that requires new carrier software that is deployed during the reconsideration period to meet the Commission's electronic flag and audit requirements.

Respectfully submitted,
**PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION**

By:



Mary McDermott

Senior Vice President/Chief of Staff for
Government Relations

Todd B. Lantor

Manager, Government Relations

**PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION**

500 Montgomery Street, Suite 700

Alexandria, VA 22314-1561

(703) 739-0300

November 9, 1998