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FEDERAL COMMUNICATIONS COMMISSION
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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 TO COMMENTS IN SUPPORT OF PCIA PETITION FOR RECONSIDERATION

The Personal Communications Industry Association ("PCIA"),[1] hereby respectfully submits its reply to comments filed in support of PCIA's petition for reconsideration of 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 petitions, no carrier deploying new customer service and billing software should be required to install the electronic flags and audit trails mandated in the Commission's rules.

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List A B C D E

[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] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Order, FCC 98-239, CC Docket No. 96-115 (Sept. 24, 1998), 63 Fed. Reg. 54379 (Oct. 9, 1998) ("*Stay Order*").

I. INTRODUCTION

By way of background, 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] The *Second CPNI Order* requires all telecommunications carriers to "establish effective safeguards to protect against unauthorized access to CPNI by their employees or agents, or by unaffiliated third parties."[4] Included among these provisions are the following electronic 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 existing customer's existing service subscription;"[5] and (2) carriers must maintain, for at least one year, "an electronic audit mechanism that tracks access to customer accounts, including when a customer's record is opened, by whom, and for what purpose."[6]

PCIA and several other parties filed petitions for reconsideration,[7] petitions for forbearance,[8] and *ex parte* letters[9] seeking review of many of the mandates set forth in the *Second CPNI Order*, including the above electronic safeguards. In these filings, PCIA argued that the mechanized safeguards were not required by Section 222, imposed a considerable financial burden on carriers, and were unnecessary to protect the privacy interests of consumers in light of the protections contained in other parts of Section 64.2009 of the Commission's rules.

In its *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

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3 *Implementation of the Telecommunications Act of 1996: 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) ("*Second CPNI Order*").

4 *Id.*, at ¶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 No. 96-115 (May 26, 1998).

8 *See e.g.*, PCIA Petition for Forbearance, CC Docket No. 96-115 (June 29, 1998).

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

10 *Stay Order*, ¶6.

reconsideration petitions, we expect that carriers will install electronic flags and audit trails at the time the system is deployed..."[11]

Because this mandate requires carriers to spend economic and administrative resources meeting a regulatory requirement that will likely prove to be temporary and that discriminates against new carriers, on November 9, 1998, PCIA submitted a petition to the Commission seeking reconsideration of this specific requirement.[12] On December 10, 1998, four parties filed comments in support of PCIA's petition for reconsideration.[13] No parties opposed PCIA's petition for reconsideration. PCIA hereby replies to the comments filed in support of our petition for reconsideration and reiterates its request that the Commission reconsider the portion of its *Stay Order* requiring any carrier deploying new software systems during the reconsideration period to meet the Commission's electronic flagging and electronic audit requirements.

II. FORCING CARRIERS WHO DEPLOY NEW SOFTWARE SYSTEMS DURING THE PENDENCY OF THE RECONSIDERATION PETITIONS TO MEET THE CPNI SAFEGUARD REQUIRMENTS DISCRIMINATES AGAINST NEW CARRIERS, DETERS INCUMBENTS FROM DEPLOYING NEW SYSTEMS, AND NEEDLESSLY EXPENDS CARRIER RESOURCES

As noted in our petition for reconsideration, PCIA, and every other commenter in this proceeding, enthusiastically supports the Commission's decision to stay its mechanized safeguard requirements pending reconsideration. As noted in the *Stay Order*, because it will take a considerable amount of time and effort to implement these requirements, "postponement of the compliance date until the Commission provides additional guidance may promote [a] more efficient and effective deployment of resources spent on meeting the

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[11] *Id.*, ¶5. PCIA has interpreted the Commission's expectation as a requirement of the *Stay Order*. Discussions between PCIA representatives and FCC staff have re-affirmed our interpretation. BellSouth argues, however, that "a statement of expectation by the Commission [does not] equate[] to an enforceable requirement." Nevertheless, BellSouth states that it "...concurs in PCIA's concerns to the extent the Commission's expression of its expectation was intended to evince for new systems a different standard for compliance with whatever requirements the Commission ultimately adopts on reconsideration. *See* Comments of BellSouth at 2.

[12] PCIA Petition for Reconsideration, CC Docket No. 96-115 (Nov. 9, 1998).

[13] *See* Comments of the National Telephone Cooperative Association (NTCA), Comments of the Cellular Telecommunications Industry Association (CTIA), Comments of Ameritech, and Comments of BellSouth (Dec. 10, 1998).

new CPNI requirements..."[14] PCIA also agrees with the Commission's determination in the *Stay Order* "that it serves the public interest to extend the deadline" in order to give the Commission time to "consider recent proposals to tailor [these] requirements more narrowly and to reduce the burdens on the industry."[15]

As PCIA noted in its petition for reconsideration, the Commission's rationale for staying the enforcement of the mechanized electronic 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. PCIA strongly opposes that portion of the *Stay Order* that only requires carriers deploying new systems during the pendency of the reconsideration petitions to comply with the flagging and audit trail requirements that are currently being reconsidered, while legacy systems are not subject to these requirements during this period. PCIA concurs with CTIA that "the *Stay Order* is unreasonably discriminatory, particularly when compliance with the current flagging and auditing requirements during the pendency of the reconsideration petitions holds a new entrant to a higher standard than incumbent carriers."[16] The *Stay Order* is equally unreasonable when applied to incumbent carriers since incumbents planning to upgrade their software systems may decide to avoid unnecessary cost and delay implementation of the upgrade until the CPNI rules are finalized, thereby denying carriers and customers better service.[17] Consistent and reasonable application of its policies require the Commission to reconsider its decision.

Moreover, since the release of the *Stay Order*, that time, various members of the telecommunications industry have been diligently working together to develop one alternative proposal to the current electronic safeguard requirements that can be endorsed by all members of the telecommunications industry. The Policy and Program Planning Division of the Common Carrier Bureau helped facilitate the development of this proposal by inviting all interested parties to come to the Commission to discuss the software flagging and

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14 *Stay Order*, ¶4.
15 *Id.*
16 Comments of CTIA at 3.
17 *Id.*; *see also* Comments of NTCA at 3.

electronic audit tracking requirements in the *Second CPNI Order*.[18] At the meeting, Commission staff clearly indicated that the Commission is looking to industry to propose, and is ready to consider, alternatives to the current electronic safeguard requirements. Industry hopes to finalize its proposal and present it before the Commission in January 1999. Given the progress made by industry on this alternative proposal and the willingness by the Commission to consider it, PCIA agrees with Ameritech that "the shape of the safeguards that eventually result from the reconsideration process may be very different from the electronic safeguards currently articulated in the Commission's rules.[19] It simply does not make sense to force carriers deploying new software systems to incur the high costs associated with the electronic safeguard requirements given the substantial likelihood that the electronic requirements will soon change.[20]

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[18] *See Common Carrier Bureau Announces Ex Parte Meeting to Discuss Developing an Industry Coalition to Address Software Flagging and Electronic Audit Tracking Requirements of Customer Proprietary Network Information (CPNI)*, Public Notice, DA 98-2504 (rel. Dec. 7, 1998).

[19] Comments of Ameritech at 2.

[20] *See* Comments of NTCA at 2-3.

III. CONCLUSION

Every party in this proceeding believes that the Commission should reconsider the portion of its *Stay Order* that requires new carrier software deployed during the reconsideration period to meet the Commission's electronic flagging and electronic audit requirements. New systems should not be held to a different set of implementation standards than embedded systems during the pendency of reconsideration petitions or thereafter. Rather, the Commission should stay the electronic flagging and auditing requirements in their entirety until a final decision on this matter is reached.

Respectfully submitted,
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

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December 23, 1998

CERTIFICATE OF SERVICE

I do hereby certify that I have this 23rd day of December, 1998, served all parties to this action with a copy of the PCIA's reply to comments in support of PCIA's petition for reconsideration by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed below.

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