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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA COURIER

May 6, 1999

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

12th Street Lobby – TW-A325

RE: *Ex parte* notification
CC Docket No. 96-115
Customer Proprietary Network Information

Personal
Communications
Industry
Association

Dear Ms. Salas:

On Wednesday May 5, 1999, members of the Personal Communications Industry Association ("PCIA"), met with Ari Fitzgerald of Chairman Kennard's office to discuss the above referenced docket. I was accompanied to the meeting by the following industry members: Steven Augustino of Kelley, Drye and Warren, LLP, David Gamble of Paging Network, Inc., Ken Goldstein of Metrocall, Inc., Cindy Jackson of TSR Wireless, LLC, Lori Alsterberg of MobileComm, Todd Bergwall of PageMart Wireless, Inc. and John Sanders of Preferred Networks, Inc.

During the course of the meeting we specifically discussed industry concerns about the impact of the Commission's existing rules regarding the use of customer proprietary network information. Industry members asked the Commission to reassess its application of these rules. The industry's specific positions discussed during the meeting are set forth in the attached letter which is also being filed with you as a separate *ex parte* notice in this docket.

Pursuant to §1.1206(b) of the Commission's rules, two copies of this filing are hereby filed with your office and a copy of this filing is being sent today to Mr. Fitzgerald.

Please refer questions in connection with this matter to me at 703-535-7482.

Sincerely yours,

Robert L. Hoggarth
Senior Vice President, Paging and Messaging

CC: Ari Fitzgerald

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List A B C D E

500 Montgomery Street Suite 700 Alexandria VA 22314-1561 703 739-0300 703 836-1608 fax www.pcia.com

May 4, 1999

The Honorable William E. Kennard
Chairman
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

The Honorable Susan Ness
Commissioner
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

The Honorable Michael K. Powell
Commissioner
Federal Communications Commission
The Portals
445 12th Street, S.W.
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The Honorable Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
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445 12th Street, S.W.
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The Honorable Gloria Tristani
Commissioner
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

Re: Customer Proprietary Network Information
CC Docket No. 96-115

Dear FCC Chairman and Commissioners:

You will soon be considering recommendations to resolve various petitions for reconsideration and/or forbearance of the Commission's rules regarding carrier use of customer proprietary network information for marketing purposes (the "CPNI rules"). As members of the paging and messaging industry serving over 90 percent of the 50 million paging subscribers in the United States, we are writing to express our deep concern about the impact the CPNI rules will have on our ability to continue to communicate with, and provide high-quality, value-added services to, our subscribers.

Less than three years ago, Congress passed the Telecommunications Act of 1996 ("the 1996 Act"), which was intended to promote vigorous competition and encourage one-stop shopping for communications by breaking down artificial, regulatory barriers between services. Despite the 1996 Act's clear and decidedly deregulatory focus, the Commission's CPNI rules greatly restrict the ability of wireless carriers to continue their tradition as full service providers by erecting high barriers to the marketing of integrated service offerings. Moreover, the

Commission's rules ignore historical differences between wireless and wireline carriers by imposing a one-size-fits-all regulatory structure that forces monopoly-era rules and distinctions on the fiercely competitive wireless sector.

In order to achieve the pro-competitive balance intended by Congress, we urge the Commission to reconsider two rules that impede wireless carriers' ability to respond to customer needs. In particular, the Commission should broaden the wireless "basket," to include related information services and customer premises equipment ("CPE"), and eliminate the anti-winback rule for wireless carriers.

1. The wireless "basket" is improperly limited. The Commission must refine its wireless "basket" to reflect wireless messaging carriers' long tradition of integrating information services and CPE with the underlying wireless service. Section 64.2005(b)(1) currently prevents a carrier (absent prior affirmative approval) from tailoring its marketing messages based upon the customer's service profile if the marketing includes information about related CPE or information services. Wireless carriers, and particularly, wireless messaging carriers, however, have long offered customers a seamless package of service incorporating information service and CPE components in addition to underlying telecommunications services. The Commission should therefore refine its wireless "basket" so as not to restrict these customers' expectations of their service relationship.

For example, pagers that once provided the subscriber with only a telephone number largely have been replaced by pagers that receive e-mail, targeted news and stock services, and numeric or text messages from individuals. Responding to this marketplace demand was relatively easy in the past, because the bulk of the transition took place without regulatory interference. Under the Commission's new CPNI rules, however, a paging carrier's ability to offer news and other information services to existing customers is greatly restricted by the artificial need to separate CPE or information services from other aspects of the customer's service. Not only is such a separation inconsistent with the service customers have traditionally enjoyed from wireless carriers, but it makes responses to future marketplace demands needlessly burdensome. The resulting economic drain on carriers ultimately will harm the very customers the CPNI rules were supposedly put in place to protect.

It is no answer to these problems to suggest that carriers use CPE or information service records to accomplish the same type of marketing. Messaging carriers generally do not divide their records into CPE, information service and wireless service components, making separate identification of records a practical impossibility. In any event, requiring carriers to use CPE or information service records as an imperfect substitute for the narrow tailoring possible through the use of information about the customer's entire service relationship produces no increase in customer privacy. All such a rule accomplishes is to increase a wireless carrier's administrative burden, thereby making it less likely that it will be able to communicate with its customers without increasing the price of its services.

Similarly, the Commission's clarification regarding the marketing of "bundled" services to replace previously bundled services does not address those situations where a customer, for

whatever reason, already had the necessary equipment or where a carrier is seeking to offer a new information service previously not available. In the paging context, the instance of "customer owned and maintained" pagers is significant and growing, which will render the clarification of lesser utility to the paging industry. In any event, even if these circumstances were relatively rare, the necessity for soliciting and tracking approvals is triggered whenever the possibility exists that a single group of customers may not be covered by the clarification. As a result, carriers will incur a significant expense in soliciting approval from their nearly 50 million existing subscribers and will have to install systems to identify those customers who have given approval to such marketing. Only a modification to the wireless "basket" itself will avoid imposing needless expenses on paging carriers so that they simply may continue marketing the way they always have and the way that customers have come to expect.

Many customers are confused by paging providers' attempts to seek customer consent for the provider to use that customer's CPNI to market him or her information services and CPE that are integral to the underlying wireless service. No matter how carefully these requests for consent are phrased, a significant number of customers believe that the paging provider is seeking the customer's permission for the provider to sell his or her CPNI to another carrier. These customers understandably refuse to grant their consent, and, as a result, remain uninformed about new products and services that are tailored to their needs. Such a result is plainly inconsistent with the Commission's desire to increase competition in the telecommunications marketplace and the needs of consumers.

Finally, by making it more difficult for wireless carriers to communicate service offerings to their customers, the Commission could exacerbate customer churn problems within the industry. Left to themselves, messaging customers generally do not spend a lot of time thinking about their pager. One key to keeping these customers happy is to inform them of the added value that a pager can provide. By engaging in a pro-active relationship with customers, carriers can reduce the lost revenues and customer acquisition costs incurred as a result of high customer churn. However, for this effort to be most effective, it is necessary for a carrier to match its messages to the customer's service profile so that the customer only receives information relevant to its situation and is not inundated with irrelevant marketing. The CPNI rules would hinder a messaging carrier's ability to focus its marketing in this manner.

Fortunately, our proposed solution does not require the Commission to alter radically its approach. Rather, it requires only that the FCC be faithful to the principle that customer expectations must define the nature of each "basket" of services. The Commission could do this either by broadening the definition of services under Section 222(c)(1)(A) or by concluding that CPE and information services are "necessary to or used in" the provision of wireless services under Section 222(c)(1)(B). Unlike the wireline world, in which regulations attempted to define a clear demarcation between telecommunications services and an independent industry providing stand-alone CPE or information services, all types of value-enhancing services have been inextricably intertwined in wireless messaging services. The wireless industry – and the wireless messaging industry in particular – has always been an example of the type of consumer-friendly, one-stop shopping that the 1996 Act and the Commission are trying to promote. Accordingly,

the Commission should refine the "basket" for wireless and/or wireless messaging services to include related information services and CPE.

2. The anti-winback rule harms customers. Section 64.2005(b)(3) – which prohibits the use of customer-specific information to attract former or soon-to-be former customers – also deprives consumers of beneficial marketing messages. Winback efforts allow consumers to receive the benefits of direct competition between carriers and are an important component of price and service competition among carriers. For example, many paging customers stop using their device because they do not understand the full range of services available to them. Indeed, a large portion of customer churn is attributed to customers who recently acquired a pager but cancel (or switch) service because they do not appreciate all of the device's potential uses. Winback is the only way to respond to those customers who want more "value," but do not know what is available or how to ask for it. When approached, such customers are usually receptive to – and indeed, appreciative of – the additional information they receive. Customer-responsive winback efforts *promote* competition and should be encouraged by the Commission – not prohibited.

3. Conclusion. Wireless consumers, and in particular, consumers of wireless messaging services, have historically purchased integrated offerings from carriers in a hotly competitive market. This competition has decreased the price and increased the range of wireless services available to consumers. Application of the pending CPNI rules to wireless providers would reverse this trend and serve to impede, rather than promote, the deployment of wireless offerings to consumers.

We urge you to take whatever steps are necessary to ensure that the traditional ability of wireless carriers and/or wireless messaging carriers to market expanded service offerings to their customers is not disrupted by the unduly burdensome CPNI rules presently pending before the Commission. We look forward to the opportunity to discuss these issues in person with you and your staff.

Sincerely,

William L. Collins, III
President and CEO
Metrocall, Inc.

David Gamble
Vice President, Regulatory Affairs
Paging Network, Inc.

John Sanders
Director of Telecommunications and
Regulatory Affairs
Preferred Networks, Inc.

Paul H. Kuzia
Executive Vice President of Technical
and Regulatory Affairs
Arch Communications Group, Inc.

Leonard DiSavino
Co-Chairman and CEO
TSR Wireless

Ron Grawert
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Forrest A. Collier
Vice President, Engineering
RAM Technologies, Inc.

Jay Kitchen
President
Personal Communications Industry Association

cc: Ms. Kathryn C. Brown, Chief of Staff, Office of the Chairman
Mr. Ari Fitzgerald, Legal Advisor, Office of the Chairman
Mr. Thomas Power, Legal Advisor, Office of the Chairman
Mr. Dan Conners, Legal Advisor, Office of Commissioner Ness
Mr. Mr. James Casserly, Senior Legal Advisor, Office of Commissioner Ness
Mr. Paul Misener, Chief of Staff/Senior Legal Advisor,
Office of Commissioner Furchtgott-Roth
Mr. Kevin Martin, Legal Advisor, Office of Commissioner Furchtgott-Roth
Mr. Peter Tenhula, Legal Advisor, Office of Commissioner Powell
Mr. Robert Calaff, Legal Advisor, Office of Commissioner Powell
Mr. Kyle Dixon, Legal Advisor, Office of Commissioner Powell
Ms. Karen Gulick, Legal Advisor, Office of Commissioner Tristani
Ms. Sarah Whitesell, Legal Advisor, Office of Commissioner Tristani
Mr. Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau
Mr. Lawrence E. Strickling, Chief, Common Carrier Bureau