The Proposed Remedy is Consistent with the Policy of Section 222

- Customers want services to be provided in a convenient manner and "expect that carriers with which they maintain an established relationship will use information derived through the course of the relationship to improve the customer's existing services." SR&O, para. 54.
- Refinement of wireless basket promotes marketing that is beneficial to customers and gives consumers information targeted to their needs. Bombarding customers with useless "junk" messages does not promote customer welfare.
- No privacy benefits are obtained by restricting use of telecom related information. In theory, non-telecom customer information (i.e., non-CPNI) can be used without restriction.

Alternative Remedy (Forbearance)

- Section 10 requires the FCC to forbear if three conditions are satisfied:
  - Enforcement is not necessary for the protection of consumers
  - Enforcement is not necessary to ensure that the carrier's charges, practices, classifications or regulations are just and reasonable
  - Forbearance is in the public interest
- By its terms, forbearance applies to all Sections of the Communications Act (except 251(c) and 271), including Section 222.
- All three forbearance criteria are met.

The Statutory Conditions for Forbearance are Met

- Wireless consumers will benefit from additional information and integrated marketing of related services with underlying wireless services.
  - Pre-Section 222 marketing shows that consumers are not harmed by wireless carriers' practices. Consumers already view wireless information services and CPE as part of their service offering.
  - High customer churn demonstrates that customers can effectively police carrier misbehavior. Carriers have every incentive not to annoy their current customers with improper uses of information.

The Statutory Conditions for Forbearance are Met (cont'd)

- CPNI restrictions are not necessary to ensure that wireless services are provided on just, reasonable and nondiscriminatory rates and terms
  - CPNI restrictions are counter-productive, as they will decrease the effectiveness of marketing efforts and lead to higher prices and/or fewer services being made available.
- Forbearance from applying the information service and CPE restrictions to wireless carriers is in the public interest
  - The FCC has already found that jointly marketed products benefit both the consumer and the carrier. Forbearance will promote such joint marketing.
  - There is little or no evidence that wireless carriers have used CPNI improperly.

CPNI *Ex Parte*

July 27, 1999

The New CPNI Rules

- Goal of Section 222's CPNI protections:

  "Balance … 'both competitive and consumer privacy interests with respect to CPNI'" SR&O at para. 3
- FCC concluded that customer expectations should set the parameters of carrier use of CPNI. SR&O at para. 54
- Led to "total service approach." Each "basket" of services corresponds to a set of customer expectations
- However, the wireless basket is defined too narrowly; excludes closely related services necessary to and used in the provision of service to the customer

Proposed Remedy: Broaden the Wireless Basket Based on Customer Expectations

- Section 222(c)(1)(B) permits use of CPNI to provide services "necessary to, or used in, the provision" of wireless services
  - Paging providers have always marketed related equipment and information services without distinction from the underlying telecommunications component. Packaging of services is a common and generally accepted practice.
  - Customers perceive only one bundle of wireless services. Customers do not distinguish, for example, messages which are information services from those which are a traditional page.
  - In many instances, advanced messaging products (e.g., two-way paging) cannot be provided without new CPE.

The Proposed Remedy is Consistent with the Policy of Section 222

- Customers want services to be provided in a convenient manner and "expect that carriers with which they maintain an established relationship will use information derived through the course of the relationship to improve the customer's existing services." SR&O, para. 54.
- Refinement of wireless basket promotes marketing that is beneficial to customers and gives consumers information targeted to their needs. Bombarding customers with useless "junk" messages does not promote customer welfare.
- No privacy benefits are obtained by restricting use of telecom related information. In theory, non-telecom customer information (i.e., non-CPNI) can be used without restriction.

Alternative Remedy (Forbearance)

- Section 10 requires the FCC to forbear if three conditions are satisfied:
  - Enforcement is not necessary for the protection of consumers
  - Enforcement is not necessary to ensure that the carrier's charges, practices, classifications or regulations are just and reasonable
  - Forbearance is in the public interest
- By its terms, forbearance applies to all Sections of the Communications Act (except 251(c) and 271), including Section 222.
- All three forbearance criteria are met.

The Statutory Conditions for Forbearance are Met

- Wireless consumers will benefit from additional information and integrated marketing of related services with underlying wireless services.
  - Pre-Section 222 marketing shows that consumers are not harmed by wireless carriers' practices. Consumers already view wireless information services and CPE as part of their service offering.
  - High customer churn demonstrates that customers can effectively police carrier misbehavior. Carriers have every incentive not to annoy their current customers with improper uses of information.

The Statutory Conditions for Forbearance are Met (cont'd)

- CPNI restrictions are not necessary to ensure that wireless services are provided on just, reasonable and nondiscriminatory rates and terms
  - CPNI restrictions are counter-productive, as they will decrease the effectiveness of marketing efforts and lead to higher prices and/or fewer services being made available.
- Forbearance from applying the information service and CPE restrictions to wireless carriers is in the public interest
  - The FCC has already found that jointly marketed products benefit both the consumer and the carrier. Forbearance will promote such joint marketing.
  - There is little or no evidence that wireless carriers have used CPNI improperly.

CPNI *Ex Parte*

July 27, 1999

The New CPNI Rules

- Goal of Section 222's CPNI protections:

  "Balance … 'both competitive and consumer privacy interests with respect to CPNI'" SR&O at para. 3
- FCC concluded that customer expectations should set the parameters of carrier use of CPNI. SR&O at para. 54
- Led to "total service approach." Each "basket" of services corresponds to a set of customer expectations
- However, the wireless basket is defined too narrowly; excludes closely related services necessary to and used in the provision of service to the customer

Proposed Remedy: Broaden the Wireless Basket Based on Customer Expectations

- Section 222(c)(1)(B) permits use of CPNI to provide services "necessary to, or used in, the provision" of wireless services
  - Paging providers have always marketed related equipment and information services without distinction from the underlying telecommunications component. Packaging of services is a common and generally accepted practice.
  - Customers perceive only one bundle of wireless services. Customers do not distinguish, for example, messages which are information services from those which are a traditional page.
  - In many instances, advanced messaging products (e.g., two-way paging) cannot be provided without new CPE.

The Proposed Remedy is Consistent with the Policy of Section 222

- Customers want services to be provided in a convenient manner and "expect that carriers with which they maintain an established relationship will use information derived through the course of the relationship to improve the customer's existing services." SR&O, para. 54.
- Refinement of wireless basket promotes marketing that is beneficial to customers and gives consumers information targeted to their needs. Bombarding customers with useless "junk" messages does not promote customer welfare.
- No privacy benefits are obtained by restricting use of telecom related information. In theory, non-telecom customer information (i.e., non-CPNI) can be used without restriction.

Alternative Remedy (Forbearance)

- Section 10 requires the FCC to forbear if three conditions are satisfied:
  - Enforcement is not necessary for the protection of consumers
  - Enforcement is not necessary to ensure that the carrier's charges, practices, classifications or regulations are just and reasonable
  - Forbearance is in the public interest
- By its terms, forbearance applies to all Sections of the Communications Act (except 251(c) and 271), including Section 222.
- All three forbearance criteria are met.

The Statutory Conditions for Forbearance are Met

- Wireless consumers will benefit from additional information and integrated marketing of related services with underlying wireless services.
  - Pre-Section 222 marketing shows that consumers are not harmed by wireless carriers' practices. Consumers already view wireless information services and CPE as part of their service offering.
  - High customer churn demonstrates that customers can effectively police carrier misbehavior. Carriers have every incentive not to annoy their current customers with improper uses of information.

The Statutory Conditions for Forbearance are Met (cont'd)

- CPNI restrictions are not necessary to ensure that wireless services are provided on just, reasonable and nondiscriminatory rates and terms
  - CPNI restrictions are counter-productive, as they will decrease the effectiveness of marketing efforts and lead to higher prices and/or fewer services being made available.
- Forbearance from applying the information service and CPE restrictions to wireless carriers is in the public interest
  - The FCC has already found that jointly marketed products benefit both the consumer and the carrier. Forbearance will promote such joint marketing.
  - There is little or no evidence that wireless carriers have used CPNI improperly.