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April 6, 2001

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
455 12th St., S.W.
Washington, DC 20554

Re: WT Docket No. 01-72

Dear Ms. Salas:

Enclosed for filing please find an original and four (4) copies of the Comments of AT&T Wireless Services, Inc. in this matter. Also enclosed is an extra copy to be date-stamped and returned to our courier.

Please do not hesitate to contact me with any questions.

Sincerely,


Amy L. Bushyeager

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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APR 6 2001

In the Matter of)
)
Petition of the Cellular Telecommunications)
& Internet Association for a Rulemaking to)
Establish Fair Location Information Practices)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WT Docket No. 01-72

COMMENTS OF AT&T WIRELESS SERVICES, INC.

AT&T Wireless Services, Inc. ("AT&T"), by its attorneys, hereby submits its comments in the above-captioned proceeding.^{1/}

INTRODUCTION AND SUMMARY

The rapid growth in mobile commerce applications and services holds the promise of bringing great benefits to consumers, among them personalized, location-based services. At the same time, the rise in the use of wireless technologies to access the Internet raises privacy concerns that must be addressed if consumers are to accept these new services and applications. As wireless services and the Web converge, mobile users will increasingly use their cellular phones, personal digital assistants and other devices to access the Internet only if they are confident that the privacy of their personal information, including location, will be adequately protected and that the choices they make about how such information will be used will be honored. The availability of established privacy principles for location-based information will

^{1/} In the Matter of Petition of the Cellular Telecommunications & Internet Association for a Rulemaking to Establish Fair Location Information Practices, Notice of Request for Comments, WT Docket No. 01-72 (rel. March 16, 2001) ("Notice").

help the wireless industry avoid privacy practices that could lead consumers to reject new applications of wireless technology.

AT&T is continuing to lay the groundwork to offer consumers advanced mobile services, such as AT&T Digital PocketNet Web access. In the future, AT&T will utilize its network to offer subscribers the convenience and advantages of location-based services. As an industry leader in advancements in wireless services, and as a firm believer in the importance of protecting our customers' privacy, AT&T strongly supports the concepts described in the Cellular Telecommunications & Internet Association's ("CTIA's") petition for a rulemaking to establish a comprehensive policy that protects the privacy of location information.

At this time, however, AT&T believes it may be premature to commence a formal rulemaking proceeding to adopt specific rules to govern carrier's location information privacy policies and practices. Location-based services are only now being conceptualized and developed, and the premature adoption of rules based on an incomplete understanding of the technologies, services and issues associated with such services could stifle innovation and lead to rules that would be ill-suited to the realities of the marketplace. If the Commission decides, nonetheless, to proceed with such an effort, AT&T offers comments on the general principles that should be followed.

I. THE PROMULGATION OF LOCATION INFORMATION PRIVACY RULES BY THE COMMISSION IS NOT NECESSARY AT THIS TIME

Because location-based applications of wireless technologies are just beginning to be developed, now is not an appropriate time for the Commission to adopt specific rules. Examples of newly available applications include technologies that allow subscribers to access driving directions, local news or weather, traffic delay updates, and "concierge" services to make dinner reservations or purchase theater tickets. These applications of wireless technologies will also

permit the delivery of location-sensitive content, advertising and personalized services based on the consumer's location. In the future, AT&T expects that a wide range of location-related services and applications will be developed that are unimagined today.

In section 222 of the Communications Act, Congress barred the use or disclosure of personal location information without the customer's express prior authorization.² AT&T is committed to meeting this mandate, not only because it is the law but because the company understands that customers will demand the protection of sensitive information. In the competitive wireless marketplace, they can and will choose to utilize only those carriers and content providers that meet their high expectations regarding the collection, use, and security of location information. Meeting these expectations is an important service quality issue for AT&T, and the company will act aggressively to do so.

AT&T believes that CTIA's proposed principles offer a sound basis upon which to create such an environment. However, it is neither wise, nor necessary, for the Commission to implement these protections by establishing a regulatory environment that could easily undermine the flexibility that carriers require to develop new services and meet individual customer needs and desires regarding the privacy of their location information. Thus, given the direction provided by the statute and the difficulty and inadvisability of crafting specific rules for nascent location-based services, AT&T believes that a rulemaking proceeding is not needed at this time.

II. CTIA's PRIVACY PRINCIPLES ARE GOOD FOR CONSUMERS AND CARRIERS, BUT SPECIFIC RULES WOULD NOT BE

If, despite AT&T's serious misgivings, the Commission nonetheless decides that specific rules are necessary to protect consumer location information at this time, AT&T would support

² 47 U.S.C. § 222(f)(1)

rules based on the principles described in CTIA's petition with the appropriate degree of flexibility for carrier implementation. In its petition, CTIA describes the four key privacy principles necessary to protect consumers' personal information as they use location-based applications of wireless technologies: notice, choice, security and integrity, and technology neutrality. Subscribers of carriers that adopt these principles will be able to realize the benefits of location-based services while keeping control over the level of privacy protection they wish to maintain, and such carriers should be deemed in compliance with section 222.

Turning first to notice, informing customers about the collection and use of location information for enhanced location services will aid consumers in making informed choices about which services they are comfortable using and which provider best meets their needs.³ Without an appropriate degree of notice about a provider's information handling practices, consumers will not have an adequate basis for deciding whether they wish to disclose their location information to a particular carrier and whether or not that carrier will treat their personal location information in an acceptable manner, including sharing with third parties. Rather than proceed in an uncertain environment, many consumers may forego accessing the valuable services that location-based applications of wireless technologies make available to them.

The CTIA principles would also give consumers a meaningful opportunity to consent prior to the collection and use of their location information for enhanced services. In enacting the Wireless Communications and Public Safety Act ("WCPSA"), Congress deemed location information to be customer proprietary network information ("CPNI"), and prescribed specific limits on the use of location information that grant it a higher level of privacy protection than

³ It is important to recognize that some location information (typically cell site/sector) is collected from customers in the normal course of business for provisioning, billing, and fraud prevention purposes, and is not subject to customer consent. 47 U.S.C. § 222(d)(1).

other forms of CPNI.⁴ Subject to limited exceptions,⁵ Congress prohibited the use or disclosure of or access to call location information “without express prior authorization” of the wireless subscriber.⁶ For all other types of CPNI, carriers need only obtain a customer’s “approval” to use or disclose the information outside of the limits set forth in the Communications Act.⁷

CTIA’s principles embody this more explicit level of customer authorization, which AT&T supports. AT&T also strongly supports CTIA’s flexible approach to obtaining customer consent. Given the myriad of location services that customers may choose to use and the different ways in which such services may be offered (e.g. on a subscription or per use basis), such flexibility will be critical in ensuring that customer consent is obtained in a sufficient and efficient manner. Flexibility will also enable AT&T to develop consent mechanisms that best meet customer expectations. Conversely, overly prescriptive consent rules based on what we know about location-based services today may constrain the development of new services or force them into inefficient configurations that will make such services harder to use and provide.

Likewise, the implementation of reasonable security measures to ensure data integrity will promote consumer confidence in location-based services by making it difficult for hackers and others to compromise consumer data. AT&T concurs with CTIA’s concerns about data security and integrity, and is committed to maintaining the security of its customers’ data. Once again, however, overly prescriptive or narrow rules covering data security could have the unintended and obviously detrimental effect of constraining carriers’ flexibility to choose the most appropriate security methods based on its particular network and database configurations.

⁴ Pub. L. No. 106-81, §2, 113 Stat. 1286.

⁵ 47 U.S.C. § 222(d).

⁶ 47 U.S.C. § 222(f)(1).

⁷ 47 U.S.C. § 222(c)(1). Such use is subject to the exceptions specified in 47 U.S.C. § 222(d).

It is also conceivable that such rules could provide a blueprint for potential hackers on a security system's structure and workings. It is hard to see how such an outcome could assuage customers' legitimate security concerns.

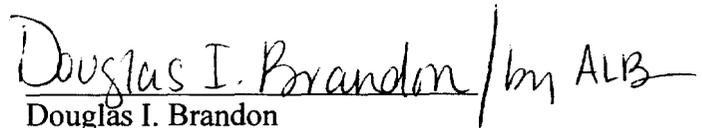
The final principle that CTIA proposes is technology neutrality. AT&T believes strongly that the success of location-based services should be based on the provision of superior service, rather than an artificial regulatory advantage based on the particular technology employed to deliver those services or the type of company providing the services or applications. Consumers make no distinction between different regulatory classes of businesses, and regulatory requirements regarding the provision of location services and the protection of location privacy information must likewise apply equally to all those offering such services. Otherwise, success in the marketplace will accrue not necessarily to the company providing the best service -- as the market would ordinarily dictate -- but to those that have the lowest regulatory burden to meet. Accordingly, AT&T urges the Commission to refrain from prescribing rules based on a particular technology (or the limited number of technologies that are available today), or promulgating rules that would unfairly advantage one class of business over another.

CONCLUSION

AT&T commends CTIA for setting forth privacy principles that will allow carriers to address customers' concerns about the privacy of their location information. Because of the nascent state of location-based services, however, the Commission should refrain at this time from opening a rulemaking proceeding to promulgate rules to govern the privacy of location information.

Respectfully submitted,

AT&T WIRELESS SERVICES, INC.

Handwritten signature of Douglas I. Brandon in cursive, with initials "ALB" written to the right of the signature.

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Of Counsel

April 6, 2001

CERTIFICATE OF SERVICE

I, Teresa S. Kadlub, hereby certify that on this sixth day of April 2001, I caused copies of the foregoing "Comments of AT&T Wireless Services, Inc." to be sent first class, postage prepaid, or by hand delivery (*) to the following:

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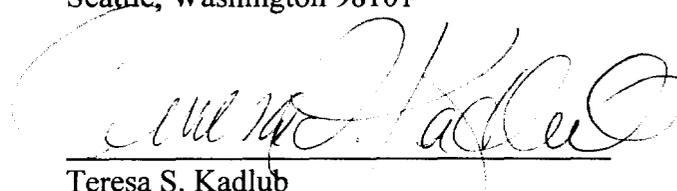
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A handwritten signature in black ink, appearing to read 'Teresa S. Kadlub', is written over a horizontal line. The signature is cursive and somewhat stylized.

Teresa S. Kadlub

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