

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of)
)
Petition of the Cellular) WT Docket No. 01-72
Telecommunications and Internet)
Association Regarding Proposed)
Location Privacy Principles)
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**REPLY COMMENTS
OF UNITED STATES
CELLULAR CORPORATION**

United States Cellular Corporation ("USCC")¹ hereby files its Reply Comments in the above-captioned proceeding.

Introduction

USCC supports the petition filed by the Cellular Telecommunications and Internet Association ("CTIA") requesting that the FCC commence a proceeding and promulgate rules to ensure that mobile wireless customers: (1) are informed about location information collection and use practices prior to collection of such

¹ USCC serves approximately three million cellular customers in 45 MSA and 102 RSA markets.

information; (2) consent to the collection and use of such information for location-based services; and (3) are assured of the security and integrity of any collected location information. USCC also supports CTIA's position that location privacy protection requirements should be technologically neutral.

CTIA's petition and the comments filed by other commenters demonstrate both the need for action and the need for flexibility and caution in adopting regulations to protect subscriber privacy.

I. The Time Is Ripe For FCC Action on Location Privacy

As CTIA notes (Petition, p.6), in 1999 Congress amended the Communications Act to declare location information to be "customer proprietary network information" ("CPNI") and therefore subject to certain use and disclosure limitations under Section 222 of the Communications Act. Section 222(f) now states that users of commercial mobile services shall not be considered to have approved the use, disclosure or provision of access to their call location information "without express prior authorization" of such use, disclosure, or access.

There is an exception to this rule in Section 222(d)(4) to permit the use of customer location CPNI to permit disclosure of location information for emergency situations.²

² There are also general exceptions in Section 222(d) to permit the use of CPNI in: billing; to protect the rights or property of carriers; to protect users of the service or other carriers from any fraudulent use or unlawful use of such services; or to provide customer requested telemarketing or information services. However, none of those exceptions is likely to involve location information.

The use of location CPNI in emergency situations is obviously reasonable and is thus unlikely to prove particularly controversial. However, the use of customer location CPNI for commercial purposes is likely to be explosively controversial. Thus, the FCC and all interested parties should act now to determine the appropriate regulatory regime to govern use and disclosure of customer location information for commercial purposes.

CTIA deserves credit both for focusing the attention of the FCC and interested parties on the location privacy issue and for suggesting sensible principles to guide the FCC's potential regulation of location privacy.

CTIA is correct (Petition, pp. 7-8) that the FCC should deal with location privacy separately from the general issue of CPNI regulation. As a reason for separate treatment, CTIA notes that location privacy is a uniquely wireless concern, whereas general CPNI issues involve all telecommunications carriers.

USCC would add that the issue of location privacy is more important from a public interest standpoint than such "CPNI" issues as whether carriers may, for example, use information about a customer's wireless calling patterns to sell him or her voice mail service. Tracking a customer's physical whereabouts for commercial purposes without his or her consent would be a serious violation of a customer's justified expectation of privacy. It is urgent that rules and principles be established under which such "tracking" may take place lawfully, if the customer so chooses, but may not take place at all if the customer does not wish to be "tracked" for such purposes.

CTIA is also right, we believe, to focus on the central concepts of: (1) notice to customers of possible location disclosure; (2) obtaining consent from those customers for such disclosure; (3) insuring the security and integrity of location information; and (4) technological neutrality among those entities having access to location information. USCC also agrees both with CTIA's recommendations that customers be required to "opt in" to location disclosure by carriers and that customers be permitted to give that consent by whatever means are most convenient (Petition, pp. 9-10.)

USCC would acknowledge, however, the concerns raised by other wireless carriers that rules based on those principles could be overly intrusive and might stifle innovative approaches to insuring location privacy.³

USCC shares those concerns but believes that it should be possible to craft location privacy rules incorporating CTIA's principles which will allow carriers to find flexible and reasonable means of carrying out the requirements. USCC believes that the wireless industry and its customers do need national rules governing location privacy.

³ See, e.g., Comments of Sprint PCS, pp. 7-10; Verizon Wireless, pp. 6-8; AT&T Wireless Services, Inc., pp. 3-5.

II. Other Commenters
Have Suggested Additional
Matters Which the FCC
Should Take Up In a Location
Privacy Rulemaking Proceeding

As noted above, USCC agrees with CTIA that all "stakeholders" need rules to govern wireless location privacy and concurs in the principles which CITA has proposed to form the basis of such rules.

However, we also believe that in order for such a regulatory structure to be workable and fair, two additional components are needed.

The first is recommended by Cingular Wireless (Comments, pp. 9-10) and other parties. The FCC should make it clear that good faith compliance with the FCC's location privacy requirements will constitute a "safe harbor" for carriers, shielding them from liability in FCC complaint proceedings, as well as federal and state litigation pertaining to carrier use or disclosure of location information.

Inherent in the relationship between a regulatory agency and those entities which it oversees is the concept that if the regulated entity complies with the agency's regulations or makes every reasonable effort to comply with them, it should not be found to have violated the regulations. A "safe harbor" should also protect carriers from the application of state laws which contradict or otherwise conflict with the federal requirement.

A second, and related, component was proposed by Sprint PCS (Comments, pp. 14-17) and Verizon Wireless (Comments, p. 10). They agree that the FCC can and must pre-empt the states from passing laws to regulate wireless location

information practices. Sprint PCS rightly notes that conflicting state laws will preclude wireless carriers from being able to determine, through "trial and error," which privacy protection methods will work best and disparate state laws will undermine the reasonable expectation of customers that there will be uniform privacy protections throughout the country.

In addition, fifty different location privacy standards would prove difficult, if not impossible for carriers to comply with.

The U.S. Constitution, Article I, Section 8, gives the Congress power to regulate "commerce...among the several states." It is occasionally debatable as to whether an activity Congress has chosen to regulate and federal agencies must therefore supervise should legitimately be considered as falling into the category of "interstate commerce." However, the regulation of mobile telephone service, which is intended to be interstate in nature, is surely not one of them.

That is a fortiori the case when one considers that here carriers seek federal regulation of the commercial use of location information. It is the essence of mobile wireless telephony for the location of wireless customers to change and sometimes for such customers to cross state lines, even during a single call.

Thus, there is every reason for there to be one national standard of wireless location privacy protection, if for no other reason than to avoid jurisdictional battles over conflicting state privacy standards affecting involving the same company or the same call. Also, if there is one standard it becomes easier (and fairer) to hold carriers to it.

III. The FCC Should Consider How To Regulate Third-Party Location Service Providers

As is pointed out by Sprint PCS, many location-based services will be provided by third-party service providers not usually subject to the Commission's jurisdiction, a problem exacerbated by Section 222's application only to "telecommunications carriers."

The FCC may want to consider Section 4(i) of the Communications Act, [47 U.S.C. Section 154(i)]with its broad grant of power to the FCC as a basis for regulating such third parties.⁴ The FCC might also ask Congress to change the Act to permit third party regulation, as was done in 1992 in amending Section 303(q) of the Act [47 U.S.C. Section 303(q)] to permit direct FCC regulation of antenna tower owners with respect to the marking and lighting of antenna towers.

Congress and the FCC should regard this as a matter of importance, as regulation of only wireless carriers would be unfair to such carriers and would not provide the privacy protection which wireless customers should have and will demand.

The FCC's goal should be a fair and uniform national standard for protecting the "location privacy" of wireless customers which is applicable to all entities which maintain and can potentially disclose such information.

⁴ Section 4(i) authorizes the FCC: "...to perform any and all acts, [and] make such rules and regulations and issue such orders, not inconsistent with this Act as may be necessary in the execution of its functions."

Conclusion

USCC applauds CTIA's efforts in commencing this proceeding and urges the FCC to proceed to consider rules which incorporate the principles proposed by CTIA and the additional recommendations discussed above.

Respectfully submitted,

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