

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

In the Matter of	)	
	)	
Petition of the Cellular Telecommunications	)	WT Docket No. 01-72
Industry Association for a Rulemaking to	)	
Establish Fair Location Information Practices	)	

To: The Commission

**REPLY COMMENTS OF  
THE AMERICAN AUTOMOBILE ASSOCIATION**

Technologically sophisticated location tools provide a high-tech solution to a problem the American Automobile Association (“AAA”) has confronted for decades: trying to deliver roadside or emergency assistance to a driver who is lost or disoriented and may not know exactly where she is. AAA’s experience in dealing with millions of calls yearly from motorists looking for travel information and help with their cars tells us that American consumers and American drivers would greatly benefit from the use of sophisticated location tools. Of course, with every technology comes new challenges and new responsibilities, and location devices are no different. AAA is acutely aware of the desires of its customers to control individually identifiable information, the creation of which is inherent in the use of location technology, and we have taken steps already to safeguard that information. Though AAA is not a telecommunications carrier subject to the Section 222 regime suggested by CTIA, we submit these reply comments in response to the Commission’s Public Notice on CTIA’s rulemaking petition simply to explain the location capability offered by AAA, to detail the privacy safeguards already built into that feature, and to make certain that the Commission correctly distinguishes this kind of location service from that provided by carriers, which is the focus of the CTIA Petition.

## **I. INTRODUCTION**

AAA, the nation's largest motoring and travel services organization and leading provider of roadside assistance, is a non-profit federation of 81 automobile clubs and full-service travel agencies serving more than 43 million members throughout the United States and Canada.<sup>1</sup> AAA clubs provide their dues paying members with a core package of services that includes emergency roadside assistance, travel related services, and member publications. Last year, AAA formed a subsidiary, RESPONSE Services Center, LLC ("RESPONSE"), a new company that will offer a variety of services to customers, including emergency assistance, travel information, and other helpful services. A key feature of the RESPONSE service, which will be widely advertised to consumers, is that it will utilize GPS-based location information to provide those services efficiently and effectively. RESPONSE is preparing to launch a field trial of its service this summer and anticipates making it commercially available by the end of this year.

### **A. How The RESPONSE Service Works.**

RESPONSE is a call-in service that gives customers the ability to reach a knowledgeable and helpful voice while they are on the road. The contact from a customer is initiated when the customer dials a toll-free number and reaches one of the RESPONSE operators. Once connected to the RESPONSE operator, the customer will be able to notify AAA of a breakdown or emergency and to request emergency or roadside assistance. In the initial field test of the RESPONSE service, the operator will ask the customer for his or her location information, which will be transmitted using a wireless handset that is equipped with an

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<sup>1</sup> In addition, the Commission has designated AAA as the exclusive frequency coordinator of the Emergency Road Service channels.

enhanced battery pack. The customer will press a button on the back of the battery pack to activate the RESPONSE GPS service, sending extremely accurate, GPS-generated location information to RESPONSE's service center. In this initial test, the user-activated, GPS-based location information is sent over the voice or data channel of the call that the customer has already set up with the RESPONSE Center. The RESPONSE operator will receive and interpret the GPS data in order to pinpoint the customer's location and better provide information or assistance that may run the gamut from transferring the call for E911 emergency assistance to calling in emergency roadside assistance to offering travel information and reservations.

A few features are worth noting:

- AAA's RESPONSE services rely on geo-location capability, a unique identifier, two-way data capability, and voice capability.
- Because the RESPONSE operator is an end user on a wireless call, neither AAA nor RESPONSE has access to the consumer proprietary network information ("CPNI") generated by the call that the wireless carrier transmitting the call receives.
- In the RESPONSE field test scenario, the location feature of the RESPONSE service is only activated when a customer pushes the button on the battery pack, which means that RESPONSE or AAA cannot track a subscriber's location unless the customer has affirmatively activated the service.<sup>2</sup>

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<sup>2</sup> In this respect, RESPONSE's GPS-based service is similar to Airbiquity's GPS Accessory and QUALCOMM's gpsOne Technology, which are described in the comments of the Location Privacy Association. *See* Initial Comments of the Location Privacy Association at 5 ("[T]he key feature of each product is that the location information processor resides in the handset itself, thereby giving the wireless subscriber direct control over the instrument generating and transmitting the data. . . . The user, not the carrier or the network, decides when the mobile location feature is on or off.") ("LPA Comments").

**B. AAA Is Strongly Committed To Protecting The Privacy Of Its Customers' Location-Based Information.**

AAA is firmly committed to protecting consumer privacy and supports the now-familiar privacy principles that CTIA included in its *Petition for Rulemaking* (“*Petition*”): notice before collecting and using personally identifiable location-based information; consent before using such information or disclosing it to third parties; and securing the integrity of any data collected to render its services. AAA recognizes that consumers have expectations with respect to the privacy of their personally identifiable information, especially vis-à-vis third parties; however, consumers who use a service such as RESPONSE also have very definite expectations that AAA will use their location information to provide the service to which they subscribe. Like many other businesses for whom use of personally identifiable information is a necessary prerequisite for rendering the services customers pay for, AAA will meet its customers’ privacy expectations by maintaining a clearly articulated privacy policy (described in more detail in Part II) that includes the same elements of notice, consent, and security. With respect to CTIA’s principle of “technological neutrality,” various commenters use this term in quite different ways. As articulated by CTIA, the question of technological neutrality involves whether telecommunications carriers should be treated equally under Section 222(f) regardless of whether they receive location-based information via a handset or a network.<sup>3</sup> Because AAA is not a telecommunications carrier and thus is not covered by Section 222, we express no direct opinion

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<sup>3</sup> See *Petition* at 11. Of course, CTIA’s technological neutrality is relevant only to common carriers because CTIA requests a rulemaking to implement Sections 222(f) and (h) of the Communications Act, which, by its terms, applies solely to “telecommunications carriers.” 47 U.S.C. § 222(f). The purpose behind 222(f) is to regulate all telecommunications carriers who collect location-based information for E911 purposes.

on that question, though CTIA's position clearly seems reasonable. To the extent that other commenters advocate a broader interpretation of technological neutrality, we address their arguments below in Part II.<sup>4</sup>

## **II. SECTION 222 OF THE COMMUNICATIONS ACT LIMITS THE COMMISSION'S JURISDICTION AND ALLOWS IT TO REGULATE ONLY COMMON CARRIER-BASED CPNI.**

Title II of the Communications Act gives the Commission authority to regulate communications services furnished by common carriers, and Section 222 directs the Commission to require "telecommunications carriers" to protect the privacy of CPNI that they collect in the normal course of providing service to consumers.<sup>5</sup> In 1999, Congress amended Section 222 by adding subsection 222(f), which prohibits disclosure of a commercial mobile service subscriber's call location information without that subscriber's express consent, with an exception for cases involving the delivery of emergency services.<sup>6</sup> Congress's intent was to ensure that a common carrier would not disclose a wireless customer's location information without that customer's consent unless such disclosure was required for the immediate delivery of emergency (or E911) services.<sup>7</sup>

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<sup>4</sup> See, e.g., Comments of Ericsson at 3 ("Ericsson Comments"); Comments of Leap Wireless International, Inc. at 7 ("Leap Comments").

<sup>5</sup> See 47 U.S.C. § 201; Telecommunications Act of 1996, § 702, Pub. L. No. 104-104, 110 Stat. 148 (1996). CPNI consists of customer calling records that would not exist but for the private activities of telephone customers. These records, which are maintained by telecommunications carriers and are not publicly available, include such sensitive and personal information as who an individual calls, when, for how long, and how often.

<sup>6</sup> See Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat. 1286 (1999).

<sup>7</sup> See S. Rep. No. 106-138, at 7 (1999).

CTIA's *Petition* asks the Commission to initiate a rulemaking under Sections 222(f) and (h) of the Communications Act. As articulated by CTIA, the rules to be proposed by the Commission would regulate how "telecommunications carriers" collect, use, disclose, and maintain personally identifiable location-based information about their subscribers. As noted above, some participants in the initial round of comments urge the Commission to expand its inquiry and regulate location-based information across the board, regardless of the way in which such information is transmitted.<sup>8</sup> However, the Commission lacks authority to go that far because Section 222 applies solely to "telecommunications carriers."<sup>9</sup> In this regard, AAA agrees with the comments of Sprint PCS, which explains that Commission "rules governing the use and disclosure of wireless location information . . . would be limited to telecommunications carriers, while most location-based services will be provided by third-party service providers."<sup>10</sup>

AAA is therefore in a similar position to the Wireless Location Industry Association, as well as the Location Privacy Association, XNS Public Trust Organization, and

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<sup>8</sup> *See, e.g.*, Ericsson Comments at 3 (urging the Commission to "hold carriers and overlay providers to the same standards of conduct"); Leap Comments at 7 ("[A]ny privacy principles applicable to wireless carriers should apply to other location based service providers.").

<sup>9</sup> 47 U.S.C. § 222(a).

<sup>10</sup> Sprint PCS Comments at 17 ("Sprint Comments"); *see also* Comments of the Wireless Location Industry Association at 3 ("WLIA Comments"); LPA Comments at 4; Comments of XNS Public Trust Organization at 3-4 ("XNSORG Comments"); *compare* Comments of Verizon Wireless at 7 ("Verizon Comments") ("Congress gave no indication in Section 222(f) or its legislative history that it wanted or expected the Commission to implement regulations pursuant to Section 222(f)").

AAA does not in these reply comments address the question of whether the Commission would have jurisdiction to regulate non-common carrier-based location information services under Section 1 of the Communications Act, because CTIA relies solely on Section 222 in its *Petition*. No case has been made in the comments filed in this proceeding or elsewhere that the (continued...)

Verizon Wireless: “WLIA’s own members are not generally wireless communications carriers regulated by the Commission, to whom such adopted regulatory policy would directly apply. Instead, WLIA members are companies who will provide wireless signal location technology and applications to the public, most often in business relationships with the regulated carriers.”<sup>11</sup> If the Commission decides that all location-based services should be treated equally, and we do not have a position on that matter, then the only step it can take is to follow Sprint PCS’s suggestion and decline to regulate common carrier-based services at all, since it does not have jurisdiction over non-common carrier-based location services.<sup>12</sup> Therefore, the Commission should reject the arguments of those commenters who urge regulation of all location based information services, as doing so is beyond the scope of both CTIA’s *Petition* and the Commission’s Section 222 jurisdiction.

This conclusion aligns with the policy decisions made by Congress. In enacting Section 222, Congress certainly expressed support for the protection of CPNI, but it also recognized differences in privacy interests based on the mode of delivery, and the Commission should respect this legislative distinction.<sup>13</sup> For example, Congress did not seek to regulate the

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Commission would need to exercise its Section 1 jurisdiction to protect the privacy of location based information.

<sup>11</sup> WLIA Comments at 3.

<sup>12</sup> See Sprint Comments at 7 (explaining that the Commission “must recognize that it does not, today, have the tools to address the subject [of the privacy of location-based information] comprehensively” in part because any rules it adopts “would extend only to wireless carriers and not to the hundreds of entities that will have access to location information”).

<sup>13</sup> See S. Conf. Rep. No. 104-230, at 205 (1996) (explaining that Congress adopted Section 222 to regulate the collection of CPNI by “*telecommunications carriers*”) (emphasis added); H. Rep. No. 104-204, pt. 1, at 90 (1995) (stating that the goal of Section 222 is to protect the privacy of information that *carriers* collect in the course of providing service to consumers).

customer information a mail order business collects in the course of doing business when a subscriber calls a toll-free number to order clothing or request travel information; it only sought to regulate the collection of CPNI by the underlying carrier. The Commission must respect Congress's considered policy judgment, as well as the grant of jurisdiction that supports it. The Commission thus can regulate carriers but not end users who may obtain and use customer information (though the practices of these entities could be subject to review by the Federal Trade Commission or the states).<sup>14</sup> AAA is also an end user that obtains information that the customer has chosen to send over a common carrier network. As such, AAA is indistinguishable from any other end user.<sup>15</sup> Therefore, AAA's RESPONSE services do not fall under the purview of Section 222, and it is not subject to Commission regulation in this regard.

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Although the Commission lacks authority to regulate AAA's RESPONSE service under Section 222(f), AAA recognizes the importance of maintaining the privacy of consumers' personally identifiable location-based information and is strongly committed to protecting consumer privacy and the integrity of its customers' location-based information. AAA will give RESPONSE subscribers clear notice regarding its collection and use of personally identifiable location-based information. AAA will never use or disclose such information without the

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<sup>14</sup> The fact that the Commission cannot regulate the collection of personal information by mail order businesses has not precluded any number of these entities from adopting privacy policies on their own.

<sup>15</sup> From the Commission's perspective, an individual's wireless call to RESPONSE is no different from that individual's wireless call to a friend. In both cases, the activities of the end user, even if they involve the collection of personal information about the caller, fall outside of the Commission's jurisdiction.

customer's express consent, which will be secured through the terms of the subscriber agreement between AAA's RESPONSE service and its customer. Finally, AAA is firmly committed to maintaining the security and integrity of any and all personally identifiable location-based information about its customers. AAA is concerned about privacy because its customers are concerned about privacy, and AAA will always strictly adhere to its stated privacy policy.

### **CONCLUSION**

The issue of maintaining the privacy of personally identifiable location-based information is of paramount importance, and AAA is firmly committed to adopting and carrying out its own procedures to provide the highest degree of protection to its subscribers' personally identifiable location-based information. AAA looks forward to being one of the new location-based information service providers who will bring to the public the many benefits of exciting new technologies – technologies whose potential is only just beginning to be realized.

Respectfully submitted,

American Automobile Association

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