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April 23, 2001

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
455 12th Street, SW
Washington, DC 20554

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APR 24 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: WT Docket No. 01-72

Dear Ms. Salas:

Enclosed for filing please find an original and four (4) copies of the Reply Comments of Location Privacy Association (LPA) in this matter. Also enclosed is an extra copy to be date-stamped and returned in our courier.

Please do not hesitate to contact me with any questions.

Sincerely,


James F. Green

Enclosures

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

)
In the Matter of the Petition of the Cellular)
Telecommunications and Internet)
Association Regarding Proposed Location)
Information Privacy Principles)
_____)

WT Docket No. 01-72

REPLY COMMENTS
OF
THE LOCATION PRIVACY ASSOCIATION

The Location Privacy Association (“LPA”), acting in accordance with the Commission’s Public Notice, DA 01-696, released March 16, 2001, hereby submits its reply comments in support of the above-captioned petition (“Petition”) of the Cellular Telecommunications and Internet Association (“CTIA”).

I. SUMMARY

1. To protect consumers’ privacy and to promote their confidence in the utility of highly accurate new location technologies, as well as in the integrity of the emerging E911 system, the Commission should promptly initiate and complete a separate rulemaking on wireless location privacy implementing the fair information practices of section 222 of the Communications Act in a manner specific to wireless location information.
2. Empowering consumers by putting location data firmly in their control through “opt-in” technologies and procedures while providing guidance to the wireless industry in the form of

clearly articulated rules and policies on location privacy will provide the basis for successful development of wireless location technology and mobile commerce in the market. The Commission's rulemaking should therefore mandate that "opt-in" procedures and technologies be employed as default consumer protections wherever practicable.

3. To give proper guidance to a nascent but rapidly growing market for wireless location data, the LPA urges the Commission to complete this rulemaking as soon as possible and to adhere strictly to the current schedule for Enhanced 911 ("E911") implementation.

II. THE COMMISSION SHOULD PROMPTLY INITIATE A SEPARATE RULEMAKING ON WIRELESS LOCATION PRIVACY

4. The Petition generated an array of comments, the majority of which were in favor of its call for immediate commencement of a separate rulemaking on wireless location issues.¹ Representative of those who do not support a rulemaking at this time, AT&T Wireless cites "the difficulty and inadvisability of crafting rules for nascent location-based services"², while Verizon

¹ Along with the LPA, in their initial comments the Center for Democracy and Technology ("CDT"), Cingular Wireless ("Cingular"), Dobson Communications Corporation ("Dobson"), the Electronic Privacy Information Center ("EPIC"), Ericsson, Nokia Incorporated ("Nokia"), the Rural Telecommunications Group ("RTG"), SCC Communications Corporation ("SCC"), SiRF Technologies ("SiRF"), Sprint PCS, and the Texas 9-1-1 Agencies ("Texas 911") all specifically endorse a separate rulemaking at this time (though Sprint PCS suggests that a rulemaking, in the absence of other actions, will not "completely meet the needs of the American public"); see LPA Comments (p.3), CDT Comments (p.1), Cingular Comments (p.1), Dobson Comments (p.6), EPIC Comments (p.1), Ericsson Comments (p.2), Nokia Comments (p.5), RTG Comments (p.1), SCC Comments (p.5), SiRF Comments (p.11), Sprint PCS Comments (p.1), Texas 911 Comments (p.4). AT&T Wireless, the Personal Communications Industry Association ("PCIA") (further inquiry, but no rulemaking at this time), Verizon Wireless, the Wireless Advertising Association ("WAA"), and the Wireless Location Industry Association ("WLIA") suggest that a separate rulemaking is either unnecessary or premature at this time; see AT&T Wireless (p.2), PCIA Comments (p.2), Verizon Wireless Comments (p.1), WAA Comments (p.2) and WLIA Comments (pp.4-5). The Direct Marketing Association ("DMA"), TruePosition and the Wireless Consumers Alliance ("WCA") specifically reject the need for a separate rulemaking; see DMA Comments (pp.3-4), TruePosition Comments (p.13) and WCA Comments (p. 2). Remaining commenters Grayson Wireless ("Grayson"), Leap Wireless International ("Leap"), and XNS Public Trust Organization ("XNSORG") did not opine specifically on the need for a rulemaking. not in favor of future rulemaking at this time.

² AT&T Wireless Comments (p.3).

cites the “stand-alone sufficiency of Section 222 (f) and the likelihood of effective self-regulation by CMRS providers.”³ Commenters who reject the need for a separate rulemaking altogether similarly cite the sufficiency of the current “detailed regulatory framework governing CPNI” and the sufficiency of self-regulatory efforts guided by market forces.⁴

5. The LPA believes, along with the majority of commenters, that the information practices of section 222, tailored in a manner specifically appropriate to wireless location information, should be the basis for privacy rules governing location-based services.⁵

6. The LPA believes the cited arguments against the rulemaking called for in the Petition are inadequate to justify any delay or refusal to conduct a separate rulemaking on wireless location privacy. Wireless penetration in general is growing rapidly and the privacy of terrestrial e-commerce is currently undergoing close scrutiny by Congress. Deployment of advanced, extremely accurate wireless location technologies in response to the Commission’s E911 docket, as well as in commercial services, is imminent. While this market arguably may be characterized as “nascent” (OnStar, a nationwide location-based service for automobiles, recently announced its one millionth subscriber), it is nevertheless growing very quickly and consumer sensitivities about the unique implications these technologies have for personal privacy are already sharpening at an equally rapid rate. If consumer confidence is not addressed

³ Verizon Wireless Comments (p.6).

⁴ DMA Comments (pp.3-4); *see also* TruePosition Comments (pp.8-12) and SiRF Comments (p.7).

⁵ LPA Comments (pp. 3-4); *see also* AT&T Comments (p.4), DMA Comments (p.2), CDT Comments (p.10), Cingular Comments (pp.2-5), Dobson Comments (pp.3-4), Ericsson Comments (pp.1-2), Leap Comments (pp.3-6), Nokia Comments (pp.2-3), RTG Comments (pp.3-4), SiRF Comments (p.1), TruePosition Comments (pp.7-8), SCC Comments (p.4), Sprint PCS Comments (p.18), Verizon Wireless Comments (pp.5-6), WAA Guidelines on Privacy and Spam (pp.3-5), WCA Comments (pp.2-3), WLIA Draft Privacy Standards (pp.3-5) and XNSORG Comments (p.1).

soon though positive actions by the Commission and industry, these important technologies may have difficulty advancing beyond their current nascent stage of development.

7. The LPA agrees with CDT that some legal framework should guide the design and deployment of new wireless location technologies, both to protect consumers' privacy and to sustain their confidence in the utility of these valuable new technologies and in the integrity of the E911 system.⁶ The Commission should not rely solely on an evolving process of self-regulation directed by the unseen forces of the market when consumer privacy and confidence in public safety hangs immediately in the balance. To do so would be to ignore the mandate of Congress in the Wireless Communications and Public Safety Act of 1999. For these reasons and others stated in its opening comments, therefore, the LPA continues to support the immediate undertaking by the Commission of a separate rulemaking on wireless location privacy.

III. THE LPA STRONGLY SUPPORTS CONSUMER OPT-IN

8. Paramount among the principles advocated by the Petition, all of which LPA supports, is the requirement of an "opt-in" regime of consumer consent. The LPA agrees with the majority of commenters that an "opt-in" approach to securing consent is clearly required by the statutory language of Section 222.⁷ The LPA joins CDT, Nokia, and WCA in specifically recommending to the Commission an opt-in regime as the default standard of consent and authorization for wireless location privacy data.⁸ The LPA and its founding members, QUALCOMM and

⁶ CDT Comments (p.1).

⁷ LPA Comments (pp.3-4); *see also* CDT Comments (p.6), Cingular Comments (pp.3-4), Nokia Comments (p.3), RTG Comments (p.3), SCC Comments (p.3), Sprint Comments (p.8), TruePosition Comments (p.7), WAA Privacy Guidelines (p.4), WCA Comments (pp.2-3) and WLIA Draft Privacy Standards (p.4).

⁸ CDT Comments (p.1), Nokia Comments (p.6) ("Consumers should be provided with a confirmed "opt-in" choice regarding the use of their location information where practicable"), WCA comments (p.2) ("The Commission should

Airbiquity, who have taken the industry lead in developing commercially-ready products that have incorporated consumer “opt-in” features for providing highly accurate wireless location information, also applaud the opt-in technological and policy choices taken proactively by Sprint and TruePosition.⁹ LPA also agrees with Nokia that “[c]onsumers should be provided with a confirmed ‘opt-in’ choice regarding the use of their location information where practicable.” The LPA believes it is imminently reasonable for every wireless subscriber to expect that any location-based service must have that subscriber’s explicit authorization for use and reuse of that subscriber’s location data. The practicability of obtaining some form of “opt-in” consent should be virtually universal.

9. The LPA believes that the Commission, by empowering consumers in putting location data firmly in their control through “opt-in” procedures, and by providing guidance to industry in the form of clearly articulated rules and policies on location privacy, can provide the basis for successful development of wireless location technology and mobile commerce in the market. This is not the strict *laissez-faire*, state-of-nature market envisioned by some commenters, the assumed benefits of which led one such commenter to advocate that “[t]he Commission need not prohibit the reuse of location information, *no matter how obnoxious it may seem*—provided the consumer had a clear understanding before accepting the service.”¹⁰ The LPA believes adherence to this rather Darwinian view is not advisable. The injured consumer sensibilities that

instead adopt rules that allow wireless consumers to enable location-based services each time they want to use them for the duration of that specific use. “).

⁹ Sprint has adopted a confirmed “opt-in” approach as “the best practice for it and its customers to use initially” and will apply the approach to “all three levels of location information: (1) “precise” location (GPS-aided handsets); (2) “area” location (cell site/sector information); and (3) “presence” information (whether phone is turned on).” Sprint Comments (p.8).

¹⁰ SiRF Comments (p.7), emphasis added.

would flow from “obnoxious” location data reuse could not only produce negative market effects that would be directed at the products or practices of specific irresponsible companies, but likely produce external negative effects for the entire industry.

10. The LPA believes that a consumer empowered by an “opt-in” position in a location data market with clear privacy rules, however, is more likely to become an enthusiastic, confident market participant and less likely to become a demoralized victim of sharp dealing. Consumers may decide to bargain away these strict “opt-in” protections for other advantages, as some have suggested, but they must have them and be aware of their implications first. For this reason, the Commission’s rulemaking should mandate that “opt-in” procedures and technologies be employed as default consumer protections wherever practicable.

III. COMMISSION ACTION SHOULD NOT BE USED AS A PRETEXT FOR DELAYING E911 IMPLEMENTATION

11. No other commenters specifically addressed the issue of the effect any Commission rulemaking might have on wireless carriers’ incentives to fulfill by October 1, 2001 their Phase II obligations under the Commission’s E911 mandate. Several commenters, however, did emphasize the need to expedite the Commission’s rulemaking on wireless location data privacy.¹¹ The LPA urges the Commission to complete this rulemaking as soon as possible and to adhere strictly to the current schedule for E911 implementation.¹²

¹¹ See CDT Comments (p.9)(“time is of the essence with regard to wireless location information”), Dobson Comments at 6 (rulemaking should be initiated “expeditiously”), EPIC Comments (p.1)(Commission should “initiate and speedily complete, such a rulemaking”), Ericsson Comments (p.2)(separating issues will allow for “timely” resolution of privacy concerns and “result in a more rapid deployment of location-based services), and Nokia Comments (p.6)(urges “expeditious formal rulemaking”).

¹² LPA Comments (p.5).

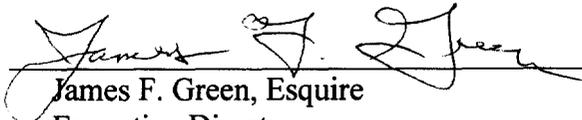
IV. CONCLUSION

12. The LPA seeks to promote and advocate privacy-conscious technologies and policies for wireless location-based services. Wireless location privacy is an issue that deserves separate, focused attention. The principles articulated by the CTIA provide a solid foundation for a thorough and reasoned analysis of this important matter. The fundamental governing principle must be an "opt-in" regime allowing consumer control over the decisions to gather and disseminate wireless location data. The Commission should complete this rulemaking as soon as possible and adhere strictly to the E911 implementation schedule.

Respectfully submitted,

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Dated: April 24, 2001

Certificate of Service

I, Jim Green, hereby certify that on this twenty-fourth day of April, 2001, I caused copies of the foregoing "Reply Comments of the Location Privacy Association" to be sent first class, postage prepaid, or by hand delivery to the following:

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