

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Telecommunications Act of 1996:)	CC Docket No. 96-115
)	
Telecommunications Carriers' Use of Customer Proprietary Network Information And Other Customer Information)	

**REPLY COMMENTS OF VERIZON TO
FURTHER NOTICE OF PROPOSED RULEMAKING**

Introduction

Nothing in the record supports the necessity of new regulations regarding customer proprietary network information ("CPNI") or carrier proprietary information.

I. It Is Not Necessary For The Commission To Create Additional Protections For Carrier Information and Enforcement Mechanisms

The NPRM asked commenters to "refresh" the record on "what safeguards in addition to those adopted in the CPNI Order, if any, are needed to protect the confidentiality of carrier proprietary information (CPI), including that of resellers and ISPs."¹ Several commenters stated that no new regulations in this area are warranted.² Indeed, the only *new* information provided on this topic came from Sprint, which stated that, despite previous arguments to the contrary, "it no longer believes that Commission prescribed safeguards are necessary for the protection of CPI." Sprint Comments, at 2. Sprint pointed out that there are numerous safeguards already

¹ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860, ¶ 145 (2002) ("Third CPNI Order").

² *See, e.g.*, Sprint Comments, at 2-4; Nextel Comments, at 7; Comments of the United States Telecom Association, at 5 ("USTA Comments") (filed Oct. 21, 2002).

existing to protect this information, including the language of the statute, which is self-executing. *Id.* at 2-4. Moreover, it stated that it is “unaware of any decision in a formal complaint proceeding issued by the Commission in the nearly 7 year period since the enactment of Section 222 in which a carrier was found to have violated its duties under Sections 222(a) & (b).” *Id.* at 3. Sprint’s candid admission that additional regulation is not necessary completely undermines the unsubstantiated claims of two other long-distance providers that additional regulation is needed. In any event, neither of the two commenters that advocated additional regulation added anything to the prior record.³ The Commission did not implement additional regulations regarding carrier proprietary information when it first considered the issue years ago, and the current record only bolsters the Commission’s original decision.

II. There Is No Need for New CPNI Rules Regarding Carriers That Go Out of Business, and Any Opt-in Rule Would Violate the First Amendment

The vast majority of commenters stated that there is no need for additional regulations regarding the transfer of CPNI to an acquiring carrier, and that the acquiring carrier should have the same abilities to use CPNI as the exiting carrier.⁴ Allowing the acquiring carrier to use CPNI in the same manner as the exiting carrier will facilitate the transition of customers, because the acquiring carrier can use CPNI to ensure that the new services are tailored as closely as possible to services the customer already has, or that would most benefit the customer’s telecommunications usage. And because the acquiring carrier simply steps into the shoes of the

³ One commenter provided no evidence that carrier proprietary information is being used for improper purposes. *See* WorldCom Comments, at 6-8 (filed Oct. 21, 2002). The other merely “incorporated by reference” comments it made in 1998 in response to the Commission’s initial request for comments on the issue. *See* AT&T Comments, at 1-2 & n.1 (filed Oct. 21, 2002).

⁴ *See, e.g.*, AT&T Comments, at 8; BellSouth Comments, at 2; Nextel Comments, at 8; Cellular Telecommunications and Internet Association Comments, at 8; USTA Comments, at 5-6.

exiting carrier, it should operate under the same incentives and statutory and regulatory protections as the exiting carrier, without the necessity of any additional notice or consent requirements.

In addition, when the acquiring carrier begins serving these transitioned customers, any *new* CPNI that comes from this new carrier-customer relationship will be governed by the existing rules for intra-company CPNI use. There is no reason why acquiring carriers should have to operate under different CPNI standards – and send the customer different CPNI notices – depending on whether the CPNI came from a pre-existing relationship with the exiting carrier, or from new services provided by the acquiring carrier.

The Commission should flatly reject one commenter’s request to adopt an *opt-in* approach for carriers’ use of CPNI “when a carrier goes out of business, or seeks to sell CPNI as an asset.”⁵ As an initial matter, it would make no sense to treat disclosure of CPNI to an acquiring carrier as if it were to “unrelated third parties,” EPIC Comments, at 5-6, given that the acquiring carrier will operate under intra-company CPNI rules for CPNI related to the services the acquiring carrier provides. Indeed, EPIC frankly acknowledges that “some disclosure of CPNI may be necessary to facilitate a smooth transition and no loss of service for the customer when a carrier goes out of business.” *Id.* at 2. However, it makes no attempt to justify separate rules for those portions of CPNI that are “necessary to facilitate a smooth transition and no loss of service,” and whatever other portions of CPNI that it advocates should be treated under an opt-in approach. Moreover, for the same reasons that caused the Tenth Circuit and the

⁵ Comments of the Electronic Privacy Information Center (“EPIC”), at 1 (filed Oct. 21, 2002).

Commission to reject an opt-in rule for intra-carrier marketing, the opt-in approach proposed by EPIC would not pass First Amendment muster.⁶

Conclusion

The Commission should not adopt any new CPNI regulations.

Respectfully submitted,



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⁶ See *U.S. West v. FCC*, 182 F.3d 1224, 1233-1239 (10th Cir. 1999); Third CPNI Order, ¶¶ 30-37.