

**Before the  
Federal Communications Commission  
Washington, DC 20554**

<b>In the Matter of</b>	)	
	)	
<b>Implementation of the Telecommunications Act Of 1996;</b>	)	<b>CC Docket No. 96-115</b>
	)	
<b>Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Informations</b>	)	<b>RM 11277</b>
	)	
<b>Petition for Rulemaking To Enhance Security and Authorization Standards For Access to Customer Proprietary Network Information</b>	)	

**Reply Comments of United States Cellular Corporation**

**I. The FCC Should Not Change Its Requirements with Respect to Carrier Safeguarding of CPNI.**

United States Cellular Corporation ("USCC") hereby files these Reply Comments in the above-captioned proceeding. USCC wishes to associate itself with the persuasive comments filed by wireless carriers in the initial comment round.<sup>1</sup> As is shown in detail in those comments, additional substantive FCC requirements for wireless carriers with respect to Customer Proprietary Network Information ("CPNI") are not necessary and would be counterproductive. Moreover, USCC concurs in the comments of Tier II carriers such as Dobson Communications Corporation and MetroPCS Communications, Inc. which argue that the proposed new CPNI requirements would create undue costs and burdens for non-national carriers, such as USCC,

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<sup>1</sup> See, e.g. Comments of Verizon Wireless; T-Mobile USA Inc.; and Cingular Wireless, LLC.

which cannot spread their compliance costs over a national customer base and face lower risks of unlawful CPNI disclosure than do the larger carriers.<sup>2</sup>

This proceeding has been triggered by "pretexting," that is the obtaining of CPNI under false pretences by outside "data brokers." Wireless carriers are already required to protect CPNI by FCC regulations, which are powerfully reinforced by carriers' economic self interest in good customer relations. "Pretexting" works to subvert those regulations and that self interest by convincing carriers that the pretexter is in fact the customer. As the wireless carrier comments demonstrate, such measures as mandatory passcodes, "audit trails," encryption, customer notification, and limited data retention periods would have little or no effect on pretexting, while alienating customers and imposing huge and unjustified costs on wireless carriers.<sup>3</sup> Nor does USCC believe there should be any change in the FCC's current opt in/opt out requirements.<sup>4</sup> USCC does not use or share CPNI other than in accordance with the "Total Service Approach," that is, it only uses CPNI to offer improved wireless services to existing customers. Ergo, additional requirements would only add to its costs without any public benefit.

## **II. The FCC Should Not Change Its Rules Regarding Joint Venture Partners and Independent Contractors.**

The FCC, in its Notice of Proposed Rulemaking in this docket, has requested comment on whether carriers should be required to secure "opt in" consent from customers before their CPNI can be utilized to tailor carrier service offerings, if carriers work with independent contractors or joint venture partners in such marketing efforts.<sup>5</sup> USCC believes the FCC should

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<sup>2</sup> See Dobson Comments, p. 5; Metro CPS Comments pp.3-6. As is the case for Metro PCS, USCC knows of no instances of the CPNI of any of its customers being misused.

<sup>3</sup> See Verizon Wireless comments, pp. 7-17; T-Mobile Comments, pp. 13-17; Cingular Wireless Comments, pp. 19-31.

<sup>4</sup> See T-Mobile Comments, p. 13.

<sup>5</sup> See Implementation of the Telecommunications Act of 1996; Telecommunications carriers' use of customer proprietary network information and other conference information; Petition for Rulemaking to Enhance Security and

not alter the existing rule, which requires "opt out" consent in such circumstances, and comments separately to emphasize our strong objections to this proposal.

As is noted by Verizon Wireless, there is no record evidence that pretexters, "data brokers" or "social engineers" have obtained CPNI unlawfully from joint venture partners or contractors in these circumstances. Indeed, there is no reason to believe that an employee of a joint venture partner or contractor would be any more or less susceptible to the blandishments of a pretexter than would a carrier employee.<sup>6</sup> Also, as Verizon Wireless points out, there are probably insurmountable constitutional barriers to an "opt in" regime in this context, in light of the 1999 US West decision.<sup>7</sup> Replacing "opt out" with "opt in" would in, Verizon Wireless's words, "resurrect precisely the same First Amendment problem that invalidated the FCC's original opt in requirements."<sup>8</sup>

Joint venture partner and contractor personnel have an equal, if not greater incentive, than carrier employees to use carrier CPNI appropriately and protect it from an unauthorized disclosure, as any unlawful disclosure of CPNI entrusted to them would be easily exposed. Moreover, pretexters would probably be less likely to call a contractor or joint venture partner than the carrier itself seeking unlawful access to CPNI, as they would probably be unaware of a carrier's local marketing arrangements. Finally, basic legal principles of principal and agent suggest that if carriers are to be held responsible for the actions of their non-employee agents, they should be able to treat their "agents" in this context, that is, contractor or joint venture partner employees, as they would their own employees for the purpose of sharing CPNI. In any case, no good reason has been provided not to do so.

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Authentication Standards for Access to Customer Proprietary Network Information, Notice of Proposed Rulemaking, FCC No. 06-10, released February 14, 2006, ¶12.

<sup>6</sup> Verizon Wireless Comments, pp. 9-10.

<sup>7</sup> Ibid., pp. 11-12. See U.S. West v. FCC, 112 F.3d 1224, 1233 (10<sup>th</sup> Cir. 1999), cert. denied, 530 U.S. 1213 (2000).

<sup>8</sup> Verizon Wireless Comments, p. 11.

**Conclusion**

The FCC should enforce its existing CPNI rules, while recognizing that laudable carrier and government efforts are now driving pretexters out of business. The FCC should not adopt additional and counterproductive regulations without any demonstration that they are required to serve the public interest in bringing an end to pretexting.

Respectfully submitted,

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