

DOCKET FILE COPY ORIGINAL Before the Federal Communications Commission Washington, D.C. 20554

SEP 01 2006

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

DECLARATORY RULING

Adopted: August 30, 2006

Released: August 30, 2006

By the Commission:

I. INTRODUCTION

1. By this Declaratory Ruling, we clarify that section 222 of the Communications Act of 1934, as amended (Communications Act), does not prevent a telecommunications carrier from complying with the obligation in 42 U.S.C. § 13032 to report violations of specific federal statutes relating to child pornography.

II. BACKGROUND

2. In section 222, Congress created a framework to govern telecommunications carriers' use of information obtained by virtue of providing a telecommunications service. All telecommunications carriers, including wireless carriers, have a duty to protect the privacy of customer proprietary network information (CPNI). Practically speaking, CPNI includes information such as the phone numbers called

1 See 47 U.S.C. § 222. Section 222 was added to the Communications Act by the Telecommunications Act of 1996. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. §§ 151 et seq.). The Commission previously has described in detail the substance and history of carriers' duties relating to CPNI. See, e.g., Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended; and 2000 Biennial Regulatory Review - Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket Nos. 96-115, 96-149, and 00-257, Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860 (2002).

2 CPNI is defined as "(A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information." 47 U.S.C. § 222(h)(1). The Act defines subscriber list information as "any information - (A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and (B) that the carrier or

(continued....)

by a consumer; the frequency, duration, and timing of such calls; and any services purchased by the consumer, such as call waiting. Section 222(c)(1) provides that, “[e]xcept as required by law,” a telecommunications carrier that receives or obtains CPNI by virtue of providing a telecommunications service generally may only use, disclose or permit access to individually identifiable CPNI without customer approval in its provision of the telecommunications service from which such information is derived, or services necessary to or used in the provision of such telecommunications service.³

3. On our own motion, we address how telecommunications carriers’ privacy duties under section 222 affect the requirement that suspected images of child pornography be reported to the CyberTipLine, operated by the National Center for Missing and Exploited Children (NCMEC), pursuant to 42 U.S.C. § 13032.⁴ Specifically, 42 U.S.C. § 13032 requires providers of an “electronic communication service or remote computing service” to report apparent violations of certain federal statutes involving child pornography to the CyberTipLine operated by NCMEC, after which NCMEC in turn is required to forward that report to a law enforcement agency or agencies designated by the Attorney General.⁵ “A provider of electronic communication services or remote computing services . . . who knowingly and willfully fails to make” such a report shall be fined up to \$50,000 for an initial failure to make such a report and up to \$100,000 for subsequent failures to make such reports.⁶

4. Congress has charged NCMEC with responsibility as a national resource center and clearinghouse for information regarding missing and exploited children.⁷ NCMEC works in partnership with the Department of Justice, the Federal Bureau of Investigation and other state, federal, and international law enforcement authorities.⁸ As part of its duties, NCMEC operates the CyberTipLine, which NCMEC describes as “an online reporting mechanism for child exploitation that is available to the public.”⁹

III. DISCUSSION

5. In this Declaratory Ruling, on our own motion, we find that the “except as required by law” exception contained in section 222(c)(1) of the Communications Act applies to any report required

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an affiliate has published, caused to be published, or accepted for publication in any directory format.” 47 U.S.C. § 222(h)(3).

³ 47 U.S.C. § 222(c)(1). Section 222 also contains certain exceptions to this general restriction that are not germane to the issues addressed in this Declaratory Ruling. *See, e.g.*, 47 U.S.C. §§ 222(d) and (f).

⁴ NCMEC has requested guidance on this and other related issues involving wireless services. *See* Letter from Ernie Allen, President & CEO, NCMEC, to Kevin Martin, Chairman, FCC (Mar. 15, 2006) (NCMEC Letter).

⁵ 42 U.S.C. § 13032(b)(1); *see also* 28 C.F.R. §§ 81.11 to 81.13. The reporting obligation described in the text above specifically applies to whomever, “while engaged in providing an electronic communication service or a remote computing service to the public, through a facility or means of interstate or foreign commerce, obtains knowledge of facts or circumstances from which a violation of section 2251, 2251A, 2252, 2252A, 2252B, or 2260 of Title 18, involving child pornography (as defined in section 2256 of that title), or a violation of section 1466A of that title, is apparent.” 42 U.S.C. § 13032(b)(1). The statute does not require providers of an electronic communication service or a remote computing service to “engage in the monitoring of any user, subscriber, or customer of that provider, or the content of any communication of any such person.” 42 U.S.C. § 13032(e).

⁶ 42 U.S.C. § 13032(b)(4).

⁷ 42 U.S.C. § 5771(5).

⁸ *See id.*

⁹ *See* NCMEC Letter at 1.

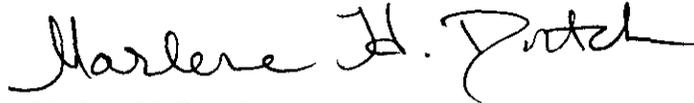
to be made by a telecommunications carrier to NCMEC pursuant to 42 U.S.C. § 13032.¹⁰ Therefore, a telecommunications carrier does not violate section 222 to the extent it is compelled by 42 U.S.C. § 13032 to disclose CPNI in making such a report. Of course, this exception to section 222 only applies to the extent disclosure of CPNI is “required” and therefore would not cover voluntary disclosures.¹¹

6. There is no need for us to analyze any particular providers or services to reach this result. The overlap between the two statutes – 47 U.S.C § 222 and 42 U.S.C. § 13032 – only arises when a provider of electronic communication services or remote computing services¹² is a telecommunications carrier and is compelled to disclose CPNI. That is, to the extent an entity is not covered by the scope of 42 U.S.C. § 13032 as a provider of electronic communication services or remote computing services, it is not “required by law” to report instances of child pornography to the CyberTipLine by that statute. Similarly, if a provider compelled to make such a report is not a telecommunications carrier or the reporting obligation of 42 U.S.C. § 13032 does not require the disclosure of CPNI, section 222 does not restrict the provider’s ability to report to the CyberTipLine. Thus, there is no circumstance in which making a report violates section 222.

IV. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 222 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 222 and sections 1.2 of the Commission’s rules, 47 C.F.R. § 1.2, that this Declaratory Ruling IS ADOPTED effective immediately.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

¹⁰ 47 C.F.R. § 1.2 (“The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.”).

¹¹ The “except as required by law” exception of 222(c)(1) is triggered only to the extent CPNI is required to be disclosed pursuant to 42 U.S.C. § 13032 or other legal requirement. 47 U.S.C. § 222(c)(1); 42 U.S.C. § 13032(d) (providing that a report to the CyberTipLine required by 42 U.S.C. § 13032(b)(1) “may include additional information or material developed by an electronic communication service or remote computing service, except that the Federal Government may not require the production of such information or material in that report”).

¹² Section 13032(a) provides that “the term ‘electronic communication service’ has the meaning given the term in section 2510 of Title 18” and “‘remote computing service’ has the meaning given the term in section 2711 of Title 18.” 42 U.S.C. § 13032(a). Thus, the term “‘electronic communication service’ means any service which provides to users thereof the ability to send or receive wire or electronic communications,” 18 U.S.C. § 2510(15), and the term “‘remote computing service’ means the provision to the public of computer storage or processing services by means of an electronic communications system,” 18 U.S.C. § 2711(2).