

January 16, 2007

Marlene Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Notice of Ex Parte Communication in CC Docket No. 96-115, In the Matter of Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information**

Dear Ms. Dortch,

On January 12, 2007, Luisa Lancetti, Frank Triveri, and Kent Nakamura of Sprint Nextel Corporation met with John Hunter and Angela Giancarlo of the Office of Commissioner McDowell to discuss the above-captioned proceeding.

During the meeting, Sprint Nextel expressed its concerns over possible requirements that carriers obtain customers' opt-in consent prior to sharing the latter's CPNI with independent contractors and joint venture partners. Specifically, Sprint Nextel explained that opt-in consent would:

- Not address the issue of pretexting—a phenomenon that relies on impersonation and not rogue joint venture partners or independent contractors.
- Prevent customers from receiving tailored product and service offerings, such as lower rate plans. Independent contractors, who are bound by strict confidentiality and security obligations, perform valuable analytical, marketing, and customer care services that benefit customers.
- Frustrate customers who want efficient customer service. Sprint Nextel provided Mr. Hunter and Ms. Giancarlo a courtesy copy of Section 64.2008 of the Commission's Rules (47 C.F.R. § 64.2008, attached) to show precisely how carriers must obtain opt-in consent. The three pages of rule provisions enumerate exacting procedures that would greatly complicate customer service transactions.

Sprint Nextel also expressed concerns that any new rules to combat pretexting might inadvertently affect existing well established rules and practices concerning a carrier's total service relationship with its customers. Sprint Nextel requested flexibility in managing any new password requirements the Commission might impose and in administering any new notification requirements the Commission might adopt. Sprint Nextel argued that certain types of customer information, such as the number of minutes remaining in a customer's rate plan in a particular month, did not require the degree of protection of other types of information such as call detail records. Sprint Nextel reiterated its position that business accounts having dedicated service representatives should not require a passcode before CPNI could be shared and that certain

calls whose authenticity was unquestionable should not require a passcode. Finally, Sprint Nextel expressed concern about the likely unintended adverse effects of an overbroad requirement that law enforcement be notified of unauthorized access to call detail records.

Sprint Nextel also stated that a minimum of a year was required to make the many system and process changes that new rules would likely require.

Should you have any questions, please contact the undersigned.

Sincerely,

*/s/ Kent Nakamura*

Kent Nakamura  
Vice President and Chief Privacy Officer

cc: John Hunter  
Angela Giancarlo

## **§ 64.2008 Notice Required for Use of Customer Proprietary Network Information**

(a) *Notification, Generally.* (1) Prior to any solicitation for customer approval, a telecommunications carrier must provide notification to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI.

(2) A telecommunications carrier must maintain records of notification, whether oral, written or electronic, for at least one year.

(b) Individual notice to customers must be provided when soliciting approval to use, disclose, or permit access to customers' CPNI.

(c) *Content of Notice.* Customer notification must provide sufficient information to enable the customer to make an informed decision as to whether to permit a carrier to use, disclose, or permit access to, the customer's CPNI.

(1) The notification must state that the customer has a right, and the carrier has a duty, under federal law, to protect the confidentiality of CPNI.

(2) The notification must specify the types of information that constitute CPNI and the specific entities that will receive the CPNI, describe the purposes for which CPNI will be used, and inform the customer of his or her right to disapprove those uses, and deny or withdraw access to CPNI at any time.

(3) The notification must advise the customer of the precise steps the customer must take in order to grant or deny access to CPNI, and must clearly state that a denial of approval will not affect the provision of any services to which the customer subscribes. However, carriers may provide a brief statement, in clear and neutral language, describing consequences directly resulting from the lack of access to CPNI.

(4) The notification must be comprehensible and must not be misleading.

(5) If written notification is provided, the notice must be clearly legible, use sufficiently large type, and be placed in an area so as to be readily apparent to a customer.

(6) If any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.

(7) A carrier may state in the notification that the customer's approval to use CPNI may enhance the carrier's ability to offer products and services tailored to the customer's needs. A carrier also may state in the notification that it may be compelled to disclose CPNI to any person upon affirmative written request by the customer.

(8) A carrier may not include in the notification any statement attempting to encourage a customer to freeze third-party access to CPNI.

(9) The notification must state that any approval, or denial of approval for the use of CPNI outside of the service to which the customer already subscribes from that carrier is valid until the customer affirmatively revokes or limits such approval or denial.

(10) A telecommunications carrier's solicitation for approval must be proximate to the notification of a customer's CPNI rights.

(d) *Notice Requirements Specific to Opt-Out.* A telecommunications carrier must provide notification to obtain opt-out approval through electronic or written methods, but not by oral communication (except as provided in paragraph (f) of this section). The contents of any such notification must comply with the requirements of subsection (c) of this section.

(1) Carriers must wait a 30-day minimum period of time after giving customers notice and an opportunity to opt-out before assuming customer approval to use, disclose, or permit access to CPNI. A carrier may, in its discretion, provide for a longer period. Carriers must notify customers as to the applicable waiting period for a response before approval is assumed.

(A) In the case of an electronic form of notification, the waiting period shall begin to run from the date on which the notification was sent.

(B) In the case of notification by mail, the waiting period shall begin to run on the third day following the date that the notification was mailed.

(2) Carriers using the opt-out mechanism must provide notices to their customers every two years.

(3) Telecommunications carriers that use e-mail to provide opt-out notices must comply with the following requirements in addition to the requirements generally applicable to notification:

(A) carriers must obtain express, verifiable, prior approval from consumers to send notices via e-mail regarding their service in general, or CPNI in particular;

(B) carriers must allow customers to reply directly to e-mails containing CPNI notices in order to opt-out;

(C) opt-out e-mail notices that are returned to the carrier as undeliverable must be sent to the customer in another form before carriers may consider the customer to have received notice; and

(D) carriers that use e-mail to send CPNI notices must ensure that the subject line of the message clearly and accurately identifies the subject matter of the e-mail.

(E) Telecommunications carriers must make available to every customer a method to opt-out that is of no additional cost to the customer and that is available 24 hours a day, seven days a week. Carriers may satisfy this requirement through a combination of methods, so long as all customers have the ability to opt-out at no cost and are able to effectuate that choice whenever they choose.

(e) *Notice Requirements Specific to Opt-In.* (1) A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods. The contents of any such notification must comply with the requirements of subsection (c) of this section.

(f) *Notice Requirements Specific to One-Time Use of CPNI.* Carriers may use oral notice to obtain limited, one-time use of CPNI for inbound and outbound customer telephone contacts for the duration of the call, regardless of whether carriers use opt-out or opt-in approval based on the nature of the contact.

(1) The contents of any such notification must comply with the requirements of subsection (c) of this section, except that telecommunications carriers may omit any of the following notice provisions if not relevant to the limited use for which the carrier seeks CPNI:

(A) carriers need not advise customers that if they have opted-out previously, no action is needed to maintain the opt-out election.

(B) carriers need not advise customers that they may share CPNI with their affiliates or third parties and need not name those entities, if the limited CPNI usage will not result in use by, or disclosure to, an affiliate or third party.

(C) carriers need not disclose the means by which a customer can deny or withdraw future access to CPNI, so long as carriers explain to customers that the scope of the approval the carrier seeks is limited to one-time use.

(D) carriers may omit disclosure of the precise steps a customer must take in order to grant or deny access to CPNI, as long as the carrier clearly communicates that the customer can deny access to his CPNI for the call.