

Peter M. Connolly
202 862 5989
peter.connolly@hklaw.com

February 5, 2007

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445-12th Street, SW
Washington, DC 20554

Re: Ex Parte Filing in CC Docket No. 96-115; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; and RM-11277 - Petition for Rulemaking to Enhance Security and Authentication Standards for Access to Customer Proprietary Network Information

Dear Ms. Dortch:

This letter is filed on behalf of United States Cellular Corporation ("USCC"). USCC wishes to express its support for the arguments made in the excellent "White Paper" filed by Verizon in these dockets on January 29, 2007. USCC agrees entirely with Verizon that the FCC should not adopt the proposal now before it, which would require telecommunications carriers to obtain "opt in" consent prior to sharing any Customer Proprietary Network Information ("CPNI") with independent contractors for marketing purposes.

In support of that position, the Verizon White Paper demonstrates that: (1) the common practice of carriers' sharing CPNI with third party vendors for marketing purposes is highly beneficial to customers, in that it can reduce their charges by facilitating informed service plan choices; (2) pretexters do not focus their activities on such independent contractors, who are bound by strict confidentiality requirements which they have every incentive to carry out; (3) the information shared with such vendors, regarding customer service plans and overall customer calling activity, while CPNI, is not the type of individual "call detail" in which pretexters are interested; (4) it is not a cost effective or feasible solution to require carriers to convert independent contractors into employees or agents for these purposes and; (5) the imposition of this unjustified rule would effectively end the use of independent contractors for those purposes, resulting in an overall loss of efficiency with no countervailing public good.

USCC would reiterate that independent contractors, whether or not they are carrier "agents" in the strict legal sense, function in the same capacity as carrier employees in assisting in marketing campaigns, and carriers can and should be held responsible for their acts as they are held responsible for the acts of employees. There is no reason for the FCC to treat such independent contractors any differently from carrier employees with respect to regulation of CPNI, as there is no evidence in the record which suggests that such contractors have or would compromise the CPNI entrusted to them. Indeed, as noted above, they have every incentive not to.

Verizon also demonstrates, by apt citation to the relevant cases, particularly the Central Hudson case,¹ that the proposed rule would violate the First Amendment, which protects "commercial speech." While the suppression of pretexting is certainly a "substantial governmental interest," the proposed rule does not "directly advance" that interest, as it will have no actual effect on pretexting. Moreover, it is not "narrowly tailored," as there are far less intrusive means available for the government to deal with pretexting without restricting this form of commercial speech. Clearly, the proposed rule is thus "more extensive than necessary" to achieve any valid governmental purpose and hence cannot withstand judicial scrutiny.

USCC would add that before taking this action the Commission should assess the impact on the incidence of pretexting of recent carrier legal actions against pretexters, as well as FCC administrative actions taken in 2006 to bolster protection of CPNI. Finally, the FCC should take into account the recent enactment of federal legislation (P.L. 109-476) outlawing pretexting and subjecting pretexters to ten year terms of imprisonment before adopting additional and very burdensome regulations of carrier practices to solve a problem which may have ceased to exist.

Very truly yours,



James R. Jenkins
Vice President
United States Cellular Corporation
8410 West Bryn Mawer
Chicago, IL 60631



Peter M. Connolly
Holland & Knight LLP
Counsel for United States Cellular Corporation
2099 Pennsylvania Avenue, NW, Ste. 100
Washington, DC 20006

¹ Central Hudson Gas & Electric Corp. v. Public Service Commission, 447 U.S. 557 (1980).