

**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;	)	
	)	
IP-Enabled Services	)	WC Docket No. 04-36

**COMMENTS OF USA MOBILITY, INC.**

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**COMMENTS OF USA MOBILITY, INC.**

USA Mobility, Inc. (“USA Mobility”) hereby submits these comments in response to the Commission’s Further Notice of Proposed Rulemaking in the above-captioned docket.<sup>1</sup> USA Mobility is the leading provider of traditional one-way and advanced two-way paging services in the United States. Because USA Mobility is a “telecommunications carrier,” it is subject to the Commission’s CPNI rules, even though it does not possess most forms of CPNI, including call detail information.

**INTRODUCTION AND SUMMARY**

Consistent with its prior comments in this proceeding,<sup>2</sup> USA Mobility urges the Commission to reject the regulations at issue in the *FNPRM* as a general matter, or at least to carve out paging carriers from the scope of any additional CPNI requirements.

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<sup>1</sup> *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary network Information and Other Customer Information; IP-Enabled Services*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-115, WC Docket No. 04-36, FCC 07-22 (rel. Apr. 2, 2007) (“*Order*” or “*FNPRM*”).

<sup>2</sup> USA Mobility, Inc. Comments, CC Docket No. 96-115, RM-11277 (filed April 28, 2006) (“*USA Mobility Comments*”).

In contrast to carriers that provide voice services, paging carriers do not generate or make use of any call detail information. Rather, they maintain only the least sensitive forms of CPNI, including the types of service plans to which a customer subscribes and, for certain plans, the amount of usage remaining. USA Mobility does not use such information for marketing purposes. Moreover, such information is of little interest to data brokers, and the record does not reflect a single instance in which a paging carrier used or disclosed CPNI without proper authorization. There is accordingly no reason to impose additional CPNI-related obligations on paging carriers.

The Commission's existing CPNI rules are more than adequate to safeguard the minimal CPNI possessed by paging carriers. Such requirements already impose significant costs on paging carriers, who are ill-equipped to bear additional burdens. Particularly in light of the recently adopted rules — which have yet to be implemented — it would be premature to impose any further obligations. The Commission should give its new rules an opportunity to function, and should assess the impact of Congress's criminalization of pretexting and the Commission's own enhanced enforcement policy, before considering whether additional mandates are necessary.

The specific proposals at issue in the *FNPRM* would be particularly burdensome and ill-suited to paging carriers. The Commission has previously declined to impose a password-based authentication requirement for non-call detail, an audit trail requirement, encryption or related physical security measures, or limits on data retention, and its analysis remains sound today.

Indeed, as applied to paging carriers, such examples of “regulatory micro-management”<sup>3</sup> would impose massive costs and minimal, if any, benefits, making them patently unreasonable.

## DISCUSSION

### I. THE COMMISSION SHOULD NOT IMPOSE ADDITIONAL CPNI OBLIGATIONS ON PAGING CARRIERS.

Paging carriers such as USA Mobility maintain only minimal, non-call detail CPNI, and accordingly they are not targets for data brokers that engage in pretexting. Nor is there any record of paging carriers’ improperly disclosing the minimal CPNI they do maintain. The paging industry’s poor financial condition further militates against extending additional mandates. In any event, no additional regulation is remotely necessary, because the Commission’s existing rules are more than sufficient to protect CPNI, especially the non-call detail information possessed by paging carriers.

#### A. Paging Carriers Possess Minimal CPNI and Do Not Pose Any Significant Threat of Improper Disclosure.

As USA Mobility explained in response to the *NPRM*,<sup>4</sup> several factors unique to paging carriers make additional regulation particularly unwarranted.<sup>5</sup> Paging carriers operate using narrowband personal communication service spectrum, which does not enable customers to conduct telephone conversations. As a result, paging carriers do not generate or store sensitive

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<sup>3</sup> See *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; Implementation of Non-Accounting Safeguards of Sections 271 and 271 of the Communications Act of 1934, as amended*, CC Docket Nos. 96-115 and 96-149, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409, ¶ 7(e) (1999) (“*Reconsideration Order*”).

<sup>4</sup> *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers’ Use of Customer Proprietary network Information and Other Customer Information; Petition for Rulemaking to Enhance Security and Authentication Standards for Access to Customer Proprietary Network Information*, Notice of Proposed Rulemaking, CC Docket No. 96-115, FCC 06-10 (rel. Feb. 14, 2006) (“*NPRM*”).

<sup>5</sup> *USA Mobility Comments* at 8-9.

call detail CPNI. Moreover, USA Mobility does not store information regarding the numbers of callers to its subscribers or pages received. Thus, USA Mobility does not even possess the sort of information peddled by data brokers. Rather, USA Mobility possesses only basic account information and does not use CPNI at all for marketing purposes. Not surprisingly, in light of these facts, the record compiled in this proceeding does not reveal any unauthorized use or disclosure of CPNI by paging carriers.

Accordingly, safeguards designed for carriers that store sensitive customer information and are vulnerable to pretexters are an obvious mismatch for paging carriers. In other contexts, the Commission has appropriately recognized the uniqueness of paging networks (including in particular the distinctions between paging switches and voice switches) and rejected one-size-fits-all solutions.<sup>6</sup> The Commission also has recognized that, as a result of the precarious condition of the paging industry, paging carriers should be spared unnecessary regulatory burdens to the extent possible.<sup>7</sup> Excluding paging carriers from any further regulation would have no ill effects, because, as shown below, existing requirements are more than adequate to protect CPNI.

**B. The Commission’s Existing CPNI Rules Are Sufficient to Protect the Minimal CPNI Possessed by Paging Carriers.**

As the Commission has recognized, telecommunications carriers (including paging carriers) already are subject to a comprehensive set of obligations designed to protect the

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<sup>6</sup> See, e.g., *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200, 15 FCC Rcd 7574, 7633 ¶ 160 (2000) (establishing exemption from number pooling for non-LNP-capable carriers, such as paging carriers).

<sup>7</sup> See, e.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, Report and Order, MD Docket No. 03-83, 18 FCC Rcd 15985, ¶ 21 (2003) (noting that, “because the messaging industry is spectrum-limited, geographically localized, and very cost sensitive, it is very difficult for this industry to pass on increases in costs to its subscribers”).

confidentiality of CPNI, even apart from the newly adopted CPNI rules.<sup>8</sup> These requirements will ensure that the small amount of CPNI possessed by paging carriers remains fully protected.

Section 222 of the Act imposes a general duty on all telecommunications carriers to protect CPNI and to disclose such information only in limited circumstances.<sup>9</sup> To implement Congress's goal of balancing "customer ready access to his or her own CPNI, and protecting customers from unauthorized use or disclosure of CPNI," the Commission adopted several "safeguards to protect against unauthorized use or disclosure of CPNI."<sup>10</sup> Among other requirements, carriers must train their personnel regarding the Commission's CPNI restrictions, establish a supervisory review process for outbound marketing campaigns, and maintain a disciplinary process for employees who violate any rules.<sup>11</sup> Carriers also must maintain records of all instances where CPNI was disclosed or provided to third parties, and they must design customer service records in such a way that the status of a customer's CPNI approval can be clearly established.<sup>12</sup>

The Commission's recent *Order* adds further CPNI safeguards, including new authentication and notice requirements, among other regulations. For example, carriers (including paging carriers) now must "obtain opt-in consent from a customer before disclosing a customer's CPNI to a carrier's joint venture partners or independent contractors for purposes of marketing communications-related services to that customer."<sup>13</sup> The *Order* also establishes new

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<sup>8</sup> *Order* ¶¶ 7-9; *NPRM* ¶¶ 5-7.

<sup>9</sup> 47 U.S.C. §§ 222(a), (c).

<sup>10</sup> *Order* ¶ 6; *NPRM* ¶ 7.

<sup>11</sup> *Order* ¶ 9.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* ¶ 37.

authentication procedures for the release of CPNI by telephone or over the Internet,<sup>14</sup> and carriers must notify customers of certain account changes and any unauthorized disclosure of CPNI.<sup>15</sup> Carriers also must file with the Commission an annual CPNI certification, including an explanation of any actions taken against data brokers and a summary of all customer complaints received in the past year concerning the unauthorized release of CPNI.<sup>16</sup> The Commission found that these new rules “will sharply limit pretexters’ ability to obtain unauthorized access to” CPNI.<sup>17</sup> That finding underscores the absence of any need for further regulation.

In addition to the protection offered by the Commission’s rules, the pretexting incidents described in the *NPRM* now would be subject to prosecution under federal law, based on the recently enacted Telephone Records and Privacy Protection Act of 2006.<sup>18</sup> The Commission intends to reinforce federal and state criminal measures with a “resolute” enforcement policy.<sup>19</sup> The Commission “henceforth will infer from evidence that a pretexter has obtained unauthorized access to a customer’s CPNI that the carrier did not sufficiently protect that customer’s CPNI,” and will take appropriate enforcement action.<sup>20</sup>

In short, the Commission’s existing and yet-to-be-implemented rules — together with a variety of criminal and civil enforcement mechanisms — are more than adequate to protect the minimal amount of subscriber information maintained by paging carriers. Rather than adopting

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<sup>14</sup> *Id.* ¶¶ 13, 21.

<sup>15</sup> *Id.* ¶¶ 24, 26.

<sup>16</sup> *Id.* ¶ 51.

<sup>17</sup> *Id.* ¶ 3.

<sup>18</sup> Telephone Records and Privacy Protection Act of 2006, Pub. L. No. 109-476, 120 Stat. 3568 (2007).

<sup>19</sup> *Order* ¶ 65.

<sup>20</sup> *Id.* ¶ 63.

new regulations, the Commission should give its new rules an opportunity to work, focusing in the meantime on enforcing existing requirements in cooperation with other federal and state agencies.

## **II. THE SPECIFIC MEASURES DISCUSSED IN THE *FNPRM* WOULD IMPOSE SUBSTANTIAL BURDENS WITHOUT ADEQUATE JUSTIFICATION.**

The particular measures on which the *FNPRM* seeks comment not only are unnecessary, but would prove unduly burdensome. These measures would require paging carriers to undertake major modifications to their operating procedures and customer service records, on top of the burdens resulting from compliance with the Commission's existing rules, without corresponding public interest benefits. The Commission has made clear that, notwithstanding the importance of protecting CPNI, the compliance costs of regulatory safeguards should not exceed their benefits. Rather, the Commission's goal is "to carry out vigilantly Congress' consumer protection and privacy aims, while simultaneously reducing the burden of carrier compliance with section 222 by eliminating unnecessary expense and administrative oversight where customer privacy and control will not be sacrificed."<sup>21</sup> The Commission previously rejected CPNI regulations comparable to those at issue in the *FNPRM* in order to "lessen the regulatory burden of various CPNI safeguards."<sup>22</sup> In particular, the Commission found that extensive compliance systems "may produce inefficiencies . . . for small carriers."<sup>23</sup> The

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<sup>21</sup> *Reconsideration Order* ¶ 6.

<sup>22</sup> *Id.* ¶ 7(f).

<sup>23</sup> *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of Non-Accounting Safeguards of Sections 271 and 271 of the Communications Act of 1934, as amended*, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket Nos. 96-115 and 96-149, 13 FCC Rcd 8061, ¶ 197 (1998) ("1998 CPNI Order").

Commission should adhere to those principles by refraining from imposing further requirements as a general matter, or at least excluding paging carriers from the scope of any new rules.

**A. Consumer-Set Passwords for Non-Call Detail CPNI**

The Commission should not compel paging carriers to adopt a consumer-set password system solely to protect non-call detail CPNI.<sup>24</sup> Because paging carriers do not store call-detail CPNI, they do not need to modify their current systems to comply with the Commission's new rule requiring passwords for the release of such information on customer-initiated calls. As a result, any password mandate for non-call detail CPNI would place a significant increased burden on such paging carriers, without corresponding benefits. Password procedures are unnecessary for non-call detail CPNI, given the diminished sensitivity of such information and the existing market-based and regulatory incentives to prevent improper disclosures.

As the record demonstrates, many service providers already give customers the option of setting passwords to authorize access to confidential information. For many consumers, however, a requirement to utilize a password would represent an unwelcome burden rather than a desirable safeguard. As the Commission has noted, customers may not want to keep track of an additional password, and password systems can invite fraudulent requests for "lost passwords."<sup>25</sup> Passwords also could make it more difficult for customer service representatives to assist subscribers in routine matters, such as billing questions or account updates. If a subscriber were to forget her password while away from her registered phone number and address, for example, she would be unable to obtain basic information about her account. The result almost certainly would be frustration and dissatisfaction with the service provider.

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<sup>24</sup> See *FNPRM* ¶ 68.

<sup>25</sup> *NPRM* ¶ 15.

As the Commission correctly recognized, irrespective of any password requirements, “carriers are still subject to section 222’s duties to protect CPNI” and authentication requirements with regard to non-call detail CPNI.<sup>26</sup> Moreover, the Commission has already directed carriers to take all reasonable precautions that are cost effective, backed by the threat of significant enforcement penalties if CPNI is improperly disclosed.<sup>27</sup> The record does not suggest any cause for concern about the security of such information, but carriers have appropriate incentives to offer password protection if consumers desire that option. Indeed, the Commission has recognized that, “[b]ecause customer information is competitively valuable, marketplace forces will ensure that carriers, as part of normal operating procedures, will protect against unaffiliated entities acquiring access to their customer information.”<sup>28</sup> These incentives remain in force, and the Commission should therefore give carriers flexibility to determine when password procedures would offer material benefits on a cost-effective basis.

## **B. Audit Trails**

The Commission also should reject — once again — the imposition of an audit trail requirement for all CPNI accessed by the carrier.<sup>29</sup> The record compiled in this proceeding demonstrates that this proposal would be extraordinarily costly and of limited value in responding to pretexting. The Commission eliminated a planned audit trail requirement in 1999 because it “would generate massive data storage requirements at great cost.”<sup>30</sup> Indeed, based on telecommunications industry estimates provided at the time, such a requirement would impose

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<sup>26</sup> *Order* ¶ 13, n.50.

<sup>27</sup> *Id.* ¶¶ 64-65.

<sup>28</sup> *1998 CPNI Order* ¶ 196.

<sup>29</sup> *FNPRM* ¶ 69.

<sup>30</sup> *Reconsideration Order* ¶ 127 (internal quotation marks and citation omitted).

costs in the hundreds of millions of dollars.<sup>31</sup> In rejecting the original audit trail requirement, the Commission concluded that “such a potentially costly and burdensome rule” could not be justified because “it is already incumbent upon all carriers to ensure that CPNI is not misused and that [FCC] rules regarding the use of CPNI are not violated.”<sup>32</sup> Similarly, the Commission rejected the related “flagging” requirement as originally imposed in the *1998 CPNI Order*, finding it would “require significant expenditures of monetary and personnel resources for those carriers, regardless of size.”<sup>33</sup> The Commission correctly determined it should “allow carriers the flexibility to adapt their record keeping systems in a manner most conducive to their individual size, capital resources, culture and technological capabilities.”<sup>34</sup>

The Commission should continue to refrain from imposing such costly burdens. Requiring paging carriers to invest in new systems, software, and personnel would serve no legitimate purpose, since there is minimal (if any) risk that CPNI in their possession would be put to improper use. Existing rules already require paging carriers to record any use of CPNI for marketing and disclosures to third parties.<sup>35</sup> Requiring an audit trail for routine uses of CPNI to generate monthly bills or to respond to customer service inquiries would serve no valid purpose.

### **C. Physical Safeguards**

The *FNPRM* also seeks comment on whether to adopt rules that govern the physical transfer of CPNI to other companies (including affiliates and joint venture partners).<sup>36</sup> As noted above, USA Mobility does not use CPNI in any marketing efforts, and it does not disclose CPNI

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<sup>31</sup> *See id.* ¶ 124.

<sup>32</sup> *Id.* ¶ 127.

<sup>33</sup> *Id.* ¶ 126.

<sup>34</sup> *Id.* ¶ 7(f).

<sup>35</sup> *NPRM* ¶ 17.

<sup>36</sup> *FNPRM* ¶ 70.

to any third parties except pursuant to lawful court order or subpoena. USA Mobility does not even store information regarding the numbers of callers to its subscribers or pages received. Thus, USA Mobility does not even possess the sort of information that would require enhanced protection during transport, thereby making this regulation wholly unnecessary as it would apply to paging carriers.

Moreover, the Commission should not micromanage the particular methods carriers use to transport information. Mandating a particular transport requirement would burden small and medium-sized carriers because they would have to revamp current systems to comply with the specific mandates, even when the requirement is not remotely necessary to protect consumers. Under the new rules, a carrier must demonstrate the steps it has taken to protect CPNI from unauthorized disclosure, and take reasonable precautions to protect CPNI at risk of significant forfeiture liability.<sup>37</sup> These requirements are sufficient to protect CPNI during its physical transport. At a minimum, the Commission should wait to see if such a mandate is necessary after carriers have implemented procedures to comply with the Commission's new CPNI rules.

#### **D. Limiting Data Retention**

Finally, the *FNPRM* seeks comment on whether to adopt regulations requiring that customer records be deleted after a set period of time.<sup>38</sup> Rather than micromanaging carriers' divergent recordkeeping processes by imposing one-size-fits-all "solutions," the Commission should "allow carriers the flexibility to adapt their record keeping systems in a manner most conducive to their individual size, capital resources, culture and technological capabilities."<sup>39</sup> Moreover, the Department of Justice has argued that destruction of CPNI could "hamper law

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<sup>37</sup> *Order* ¶ 63.

<sup>38</sup> *FNPRM* at ¶ 71.

<sup>39</sup> *Reconsideration Order* at ¶ 7(f).

enforcement efforts.”<sup>40</sup> In light of the recent criminalization of pretexting, the Commission should not impose any blanket data-retention rules that could interfere with law enforcement agencies’ ability to obtain relevant evidence.

### CONCLUSION

For the foregoing reasons, the Commission should not adopt further CPNI rules or, if it does adopt any additional regulations, it should exclude paging carriers from their scope.

Respectfully submitted,

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July 9, 2007

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<sup>40</sup> *FNPRM* ¶ 71.