

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the Telecommunications)	
Act of 1996: Telecommunications Carriers')	
Use of Customer Proprietary Network)	CC Docket No. 96-115
Information and other Customer Information)	
)	
Petition for Rulemaking to Enhance Security)	FCC 07-22
and Authentication Standards for Access to)	
Customer Proprietary Network Information)	

To: The Commission

**PETITION FOR PARTIAL RECONSIDERATION
OF THE
ENTERPRISE WIRELESS ALLIANCE
AND THE USMSS, INC.**

The Enterprise Wireless Alliance (“EWA” or “Alliance”), together with the USMSS, Inc. (“USMSS”), an affiliated entity of the Alliance, in accordance with Section 1.429 of the Federal Communications Commission (“FCC” or “Commission”) Rules and Regulations, respectfully submits this Petition for Partial Reconsideration in the above-entitled proceeding.¹ The Order strengthened the privacy rules that protect customer information collected and used by telecommunications carriers in response to a record confirming that assaults on personal telephone records have compromised the security of that data.

As stated in their Joint Comments and Reply Comments in this proceeding (collectively, Joint Comments), EWA and USMSS strongly support the pro-consumer protection of proprietary telephone information and appreciate Congressional and FCC efforts to advance those privacy

¹ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-115, FCC 07-22, 72 Fed. Reg. 31782 (2007) (“Order”).

rights.² Thus, EWA and USMSS support many of the additional requirements that the Order imposed on telecommunications carriers.

Nevertheless, EWA and USMSS disagree that the new customer proprietary network information (“CPNI”) rules should apply to non-interconnected telecommunications carriers. EWA and USMSS also disagree that CPNI rules should apply to carriers that provide only ancillary interconnection to the Public Switched Network (“PSN”). Specifically, Part 90 carriers that offer dispatch service only and are not interconnected with the PSN as well as those that provide only ancillary interconnection services, as described below, do not collect and, therefore, cannot divulge the type of information contemplated by the CPNI rules. As a result, EWA and UMSS seek partial reconsideration of the Order regarding these issues.

I. THE ORDER DOES NOT OFFER A SUBSTANTIVE RESPONSE TO THE JOINT COMMENTS.

In their Joint Comments, EWA and the USMSS explained that the typical Part 90 telecommunications carrier bears no resemblance – for CPNI purposes – to wireless carriers authorized under Parts 22, 24, 26 or 27 of the FCC rules, much less to wireline telephone carriers.³ Part 90 carriers provide a localized dispatch service almost exclusively to business and governmental users. The service is designed to satisfy a one-to-many group call need for these types of organizations and the systems rarely include individual consumers as customers. The very purpose of this service is to permit a single transmission to be heard by multiple parties, the antithesis of the type of personal, private telephone communications at issue in the CPNI rules.

² See Comments of EWA/USMSS at 2-3.

³ Because these licensees provide a service for profit to third parties, they are considered telecommunications carriers under the Communications Act and, thus, under the FCC rules. However, with the rare exception of those Part 90 telecommunications carriers that satisfy the Commission’s “covered carrier” definition already used to distinguish among types of wireless carriers for purposes of matters such as E-911 obligations, such as Sprint Nextel Corporation and a handful of other entities, the remaining Part 90 carriers do not offer the type of service offerings that warrant conformance with the CPNI requirements.

Moreover, unlike other wireless carriers, the providers of Part 90 carrier systems do not rely on call centers to handle customer inquiries, whether billing or otherwise. In fact, the person responding to such questions likely is the very same individual who sold them the two-way radios that are used on the system and who handled service initiation. They are far too small to offer online account access and have no retail locations other than the primary location for the carrier's business. They do not have joint venture arrangements relating to their customers and do not provide information to independent contractors. They have none of the indicia that have prompted both Congress and the Commission to impose requirements that protect against pretexting and other unauthorized use of proprietary telephone information.

In fact, the great majority of these Part 90 systems are not interconnected with the Public Switched Network ("PSN") at all. The only transmissions are radio communications from the customer's dispatcher to its fleet, for example, drivers in a pizza delivery or a construction company, as well as their communications back to the dispatcher and, in some system configurations, to one another. These communications have no penumbra of privacy associated with them and are not transmitted through the PSN at any time.

A small number of these Part 90 systems also provide ancillary interconnection capability in addition to their primary dispatch function. The Joint Comments explained that Part 90 carriers providing this type of ancillary interconnection are themselves the "subscriber" to the PSN as a business customer, not as a co-carrier. In turn, they provide over-dial numbers to radio units operated by their customers which permit a relatively primitive form of interconnection with those units.⁴ The customers of these Part 90 carriers have no relationship with the PSN and have no PSN records associated with their interconnected transmissions. Rather, to the extent

⁴ See Comments of EWA/USMSS at 5 and Reply Comments at 4.

that information about these calls is available, it is attributed to the Part 90 carrier/PSN customer and not differentiated among that carrier's customers.

This limited interconnection capability used to be more prevalent before cellular service became more ubiquitously available. When customers had no better option, this cumbersome form of interconnection sometimes was used by the owner or manager of a business or the top officials of a governmental entity as a "better than nothing" alternative. Now that cellular service is broadly available, most Part 90 carriers have abandoned this capability altogether since it cannot compete with "real" cellular service. Even those few that have retained this option continue to make it available only as an ancillary capability to dispatch service. Thus, it is essentially unheard of for an individual to rely on this type of PSN interconnection to serve personal, private communications needs since these systems are designed primarily to meet dispatch requirements.

In the Joint Comments, EWA and the USMSS argued that non-interconnected, dispatch-only Part 90 users should be exempt from CPNI requirements entirely. They do not provide access to the PSN and, therefore, their customers do not have any type of proprietary, confidential information that warrants protection. The only customer-specific information obtained by the non-interconnected Part 90 carrier is the customer's name and address and the number of dispatch units they will operate, all of which are used only for billing purposes. This data is publicly available, has no economic or other value to third parties, and would not be considered proprietary by these users. They do not have access to "call details" which are defined in the Order as "any information that pertains to the transmission of specific telephone calls including, for outbound calls, the number called, and the time, location, or duration of any call and, for inbound calls, the number from which the call was placed, and the time, location or

duration of any call.”⁵ Because these systems do not have access to the PSN, there are no telephone calls the details of which could be tracked. Moreover, exempting these carriers would be consistent with the decision in the Order to extend the CPNI requirements to providers of interconnected VoIP service, but not to providers of other VoIP services.⁶

The Joint Comments of EWA and the USMSS also urged the FCC to distinguish Part 90 dispatch licensees that offer ancillary interconnection to their customers and recommended that the Commission apply a “covered carrier” type definition to these licensees.⁷ It is clear from the Order that the concerns that have prompted this proceeding do not arise in the context of this very narrow segment of the broad wireless telecommunications carrier industry. As explained in the Joint Comments, the only information that **might** be available for collection from the non-covered carrier interconnected Part 90 operator is call duration.⁸ Even then, however, since most Part 90 carriers do not charge airtime usage, but bill a flat per radio monthly rate for interconnected services, they typically do not track call duration.⁹ It is only those very few Part 90 carriers that are sufficiently sophisticated to satisfy the “covered carrier” test that provide service to consumers, rather than business, industrial and governmental entities, and that actually track and maintain the type of data that might be considered confidential under the CPNI rules.

EWA and the USMSS argued that it would not be contrary to the goals of Congress when it enacted Section 222 of the Telecommunications Act of 1996¹⁰ to exempt these classes of telecommunications carriers. Since they do not have access to the type of information intended

⁵ Order at n. 45.

⁶ Order at ¶¶ 54-59.

⁷ See Comments of EWA/USMSS at 5-8 and Reply Comments at 3-8.

⁸ Of course, the wireline carrier that handles these transmissions may keep more detailed records and will be subject to CPNI obligations.

⁹ *Id.*

¹⁰ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. §§ 151 *et seq.*), 47 U.S.C. §222.

to be protected under the statute, their inclusion could not have been contemplated in its enactment.

The Order did not address either of these situations with any substantive analysis. Rather, it relegated to a footnote its only reference to the EWA/USMSS filings, and in doing so, seemingly misconstrued the points made in those submissions. The Order states only that the FCC disagrees with EWA and other commenters regarding the CPNI filing requirements, explaining that the Commission is concerned about the privacy of customers of small and regional carriers, not just large carriers, and asserting that the benefits of customer privacy protection significantly outweigh a carrier's costs to implement CPNI rules.¹¹

But, as was made clear in the Joint Comments, the issue is not primarily one of cost, but of the type of user served, the type of service offered, and the fact that the great majority of Part 90 carriers are not even interconnected with the PSN. It is not clear how the FCC expects them to demonstrate they have protect information they do not have and why it is in the public interest to require them to conform to rules that have no applicability to the customers they serve or the data to which they have access. The cost of requiring them to attempt to do so when they have no CPNI to protect goes well beyond the intent of Congress.

In that respect, if the FCC again declines to exempt Part 90 carriers, other than those that meet the "covered carrier" test, from the Section 222 CPNI requirements entirely, EWA and the USMSS urge that the Commission consider the customers of these systems to fall within the business customer exemption set out in the Order.¹² In carving out that exemption, the FCC recognized that "privacy concerns of telecommunications consumers are greatest when using

¹¹ Order at n. 167.

¹² Order at ¶ 25.

personal telecommunications services.”¹³ The Order acknowledged that “the fraudulent practices described [in the record] have mainly targeted individual consumers...”¹⁴ The customers of Part 90 carrier systems are business and governmental entities that have direct contact with a known individual in securing service and negotiating a contract. Whether or not that individual has the title of “dedicated account representative,”¹⁵ for all the reasons detailed above, there is a direct relationship between these carriers and their customers, a relationship that does not exist in the typical telecommunications carrier/subscriber arrangement, and one that provides these non-consumer customers with both the opportunity and the ability to negotiate satisfactory contractual arrangements.

II. CONCLUSION

The Alliance and the USMSS again recommend that the FCC exempt all telecommunications carriers operating systems authorized on Part 90 channels that: (1) are not interconnected with the PSN at all; or (2) are interconnected, but do not satisfy the “covered carrier” definition. For the reasons described herein, EWA and USMSS urge

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

the Commission to reconsider its Order and modify its regulations consistent with the recommendations herein and in their Comments and Reply Comments to this proceeding.

Respectfully submitted,

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July 9, 2007