

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Petition of Public Knowledge et al. for Declaratory) WC Docket No. 13-306
Ruling Stating that the Sale of Non-Aggregate Call)
Records by Telecommunications Providers without)
Customers' Consent Violates Section 222 of the)
Communications Act)
)

**REPLY COMMENTS OF
CTIA – THE WIRELESS ASSOCIATION®**

CTIA – The Wireless Association® (“CTIA”)¹ hereby replies to comments submitted in response to the above-captioned petition filed by Public Knowledge et al. (“Petitioners”).²

Wireless carriers fully recognize that consumer trust is critical for the continued explosive growth of the mobile ecosystem, and CTIA members are committed to protecting the privacy of

¹ CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization includes Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

² Petition of Public Knowledge et al. for Declaratory Ruling Stating that the Sale of Non-Aggregate Call Records by Telecommunications Providers Without Customers’ Consent Violates Section 222, WC Docket No. 13-306 (filed Dec. 11, 2013) (“Petition”); Wireline Competition Bureau Seeks Comment on Petition of Public Knowledge for Declaratory Ruling that Section 222 of the Communications Act Prohibits Telecommunications Providers from Selling Non-Aggregate Call Records Without Customers’ Consent, DA 13-2415, *Public Notice* (WCB Dec. 18, 2013); Petition of Public Knowledge et al. for Declaratory Ruling Stating that the Sale of Non-Aggregate Call Records by Telecommunications Providers Without Customers’ Consent Violates Section 222, WC Docket No. 13-306, *Order* (WCB Jan. 30, 2014 (extending reply comment deadline)).

their customers pursuant to Section 222 of the Communications Act of 1934, as amended (the “Act”) and, more generally, under federal and state privacy laws and self-regulatory codes.

The record shows that the Commission should dismiss the Petition for the following reasons:

- ***There is no legal basis for the Petition’s request, and proponents offer no legal support to advance Petitioners’ claim.*** Those commenters that engage in substantive legal review join CTIA in finding that under Section 222, de-identified CPNI is neither “individually identifiable CPNI” nor “aggregate customer information.”
- ***The Petition is speculative, and commenters show that it is not impossible to anonymize data.*** Petitioners suggest a risk of re-identification that does not take into account the findings and best practices set forth by the Federal Trade Commission (“FTC”) and others. Rather, the studies cited by Petitioners are narrow in nature.
- ***Neither the Petition nor commenters present any factual evidence of re-identification or risks thereof in the CPNI context.*** Supporters of the Petition do not analyze the carriers’ methods of anonymizing CPNI data or in any way show that carriers’ methods are deficient. To the contrary, wireless carriers explain how they protect customer information in various ways, consistent with applicable laws and appropriate for the type of information and its purpose(s).

I. THE RECORD CONFIRMS THERE IS NO LEGAL BASIS FOR THE REQUESTED RULING

Petitioners have put forward an “unprecedented concept”³ that all CPNI is either individually identifiable or aggregate customer information under Section 222, and supporters merely regurgitate this claim without any further legal argument to advance it.⁴

In contrast, many commenters, including CTIA, engage in a substantive statutory review of Section 222 to show that de-identified CPNI is neither “individually identifiable CPNI” nor “aggregate customer information,” but a separate category altogether.⁵ There is nothing in

³ Sprint Comments at 1.

⁴ See, e.g., Greenlining Comments at 2-3.

⁵ CTIA Comments at 5-11; AT&T Comments at 3, 10; CenturyLink Comments at 2, 4; Sprint Comments at 3-4; and Verizon and Verizon Wireless Comments at 3-5.

Section 222 or the Commission’s rules “that requires all customer information to be relegated to one of two categories of information.”⁶ As a matter of statutory construction, “[t]he Commission must give effect to Congress’s use of the phrase ‘individually identifiable,’ and under no plausible reading of Section 222(c)(1) could CPNI that has been purged of all personal identifiers be considered ‘individually identifiable.’”⁷ In other words, “[i]n order for the phrase ‘individually identifiable’ to mean anything in the Commission’s rules and orders, it cannot simply be a synonym for ‘non-aggregate.’”⁸

Moreover, Congress “gave individually identifiable information about a customer’s use of telecommunications services the highest degree of protection in connection with carriers’ use of data for commercial purposes such as marketing, but did not restrict the use of information if it is not individually identifiable.”⁹ The Petition “would upend [the] carefully crafted statutory balance by applying restrictions meant only for individually identifiable CPNI to ‘call records that have been purged of personal identifiers.’”¹⁰

Even if the Commission were to find that de-identified information must fit into one of these two categories, it would “make no sense to classify anonymized data as ‘individually identifiable’ rather than ‘aggregate,’” as the “privacy-related purposes of the statute are far better served by interpreting ‘aggregate information’ to include all anonymized information.”¹¹

⁶ CenturyLink Comments at 2, 4.

⁷ AT&T Comments at 7.

⁸ Sprint Comments at 4.

⁹ Verizon and Verizon Wireless Comments at 5.

¹⁰ AT&T Comments at 2.

¹¹ AT&T Comments at 3-4.

II. THE RECORD DEMONSTRATES THE SPECULATIVE AND GROUNDLESS NATURE OF THE PETITION

The Petition fails to demonstrate an adequate level of specificity or actual harm to provide a basis for Commission action, and no commenter has attempted to cure this defect.¹² Petitioners offer only broad, vague, and speculative allegations involving CPNI and “present[] no factual evidence that shows customers have been identified from anonymized information about customers’ use of telecommunications services.”¹³ Nor do Petitioners analyze the carriers’ methods of anonymizing CPNI data.¹⁴ They state only that “carriers’ methods of ‘anonymization,’ as reported in the media *may be* vulnerable to ‘re-identification.’”¹⁵

Instead, Petitioners “seem to be arguing that it is not possible to anonymize data,”¹⁶ a view that is “analogous to the argument that because some locks have been broken, there is no such thing as a reasonably secure door.”¹⁷ Risk of re-identification, however, is a factual question depending on specific characteristics of a data set,¹⁸ and the question of whether a carrier took reasonable measures to protect data thus is a “fact-specific inquiry” that is “not the proper subject for a declaratory ruling.”¹⁹ In any event, the record makes clear that wireless

¹² See 47 C.F.R. § 1.2 (the Commission may issue a declaratory ruling where doing so would “terminat[e] a controversy or remov[e] uncertainty”). The agency “will do so only when critical facts are explicitly stated.” *Rocking M Radio, Inc.*, 25 FCC Rcd 1322, 1332 (MB Audio Div. 2010), citing *Yale Broadcasting Co. v. FCC*, 478 F.2d 594, 602 (1973). See CTIA Comments at 4.

¹³ Verizon Comments at 6-7. See also Lenard Comments at 2 (“Petitioners do not ... in any way show that [carriers’] methods are deficient.”).

¹⁴ Lenard Comments at 2.

¹⁵ Petition at 6-8.

¹⁶ Lenard Comments at 1.

¹⁷ Future of Privacy Forum Comments at 3.

¹⁸ See AT&T Comments at 4.

¹⁹ Verizon Comments at 8.

carriers protect customer information in various ways, consistent with applicable laws, and appropriate for the type of information and its purpose(s).²⁰

Contrary to Petitioners' arguments, the comments show that it is not impossible to de-identify CPNI. The studies cited by Petitioners are narrow in nature²¹ and the cases they involved did not follow the findings and best practices put forth by the FTC and others.²² Moreover, as a policy matter, the Petition "fails to recognize that context is important," for example, "that risks present when information is disclosed publicly are different than when information is kept private and used by a company or its business partners subject to safeguards"²³ "Several scholars have argued that we should not over-react to the risks of re-identification, and, furthermore, common sense tells us that we can get a great deal of utility out of anonymized data with reasonable privacy safeguards."²⁴

²⁰ See, e.g., AT&T Comments at 16 ("AT&T approaches anonymization in a manner consistent with best industry practices, such as described in the framework developed by the [FTC], and by experts in the field specifically to address concerns related to preventing re-identification of anonymized data"); Verizon Comments at 1 ("Verizon takes seriously its obligation to protect the privacy of its customers' information, and that is particularly true of information that is individually identifiable"); Sprint Comments at 2-3 (describing the Petition's mischaracterization of Sprint's privacy practices).

²¹ See Lenard Comments at 2; Future of Privacy Forum Comments at 4-6. See Verizon Comments at 6-7 ("None of the re-identification research cited concludes that all, or even most, de-identified data sets are susceptible to re-identification.").

²² Future of Privacy Forum Comments at 7; Verizon Comments at 7-8; AT&T Comments at 17-19. The FTC recently found that "anonymized data 'would not be reasonably linkable to a particular customer' if (1) the data were shared pursuant to contracts that prohibit re-identification and (2) the data has been properly scrubbed of the types of information that can be used to re-identify the particular person associated with the data." AT&T Comments at 4, quoting Federal Trade Commission, *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Business and Policy Makers* at 21 (Mar. 2012), available at <http://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-report-protecting-consumer-privacy-era-rapid-change-recommendations/120326privacyreport.pdf>.

²³ Verizon Comments at 2.

²⁴ Information Technology and Innovation Foundation Comments at 3-4.

III. CONCLUSION

As outlined above, Petitioners' request "to extend statutory restrictions on the use of certain personally identifiable customer information to apply broadly to information that is *not* personally identifiable is misplaced and should be denied."²⁵ The Commission should continue to enforce any unlawful carrier disclosure of individually identifiable CPNI under its existing rules and policies.

Respectfully submitted,

CTIA-THE WIRELESS ASSOCIATION

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²⁵ Verizon Comments at 1.