

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of the Telecommunications Act of 1996	)	CC Docket 96-115
	)	
Telecommunications Carriers' Use of Customer Proprietary Information and Customer Information.	)	WC Docket No. 04-36
	)	

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**REPLY COMMENTS OF THE  
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

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The National Association of State Utility Consumer Advocates (“NASUCA”)<sup>1</sup> submits these brief reply comments to the Federal Communications Commission (“FCC” or “Commission”) responding to comments on the Further Notice of Proposed Rulemaking (“FNPRM”) released in these dockets on April 2, 2007, regarding protections for consumer proprietary network information (“CPNI”).<sup>2</sup> Joint comments were filed by a coalition of consumers groups that proposed reasonable additional

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<sup>1</sup> NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. See, e.g., Ohio. Rev. Code Chapter 4911; 71 Pa.Cons.Stat. Ann. § 309-4(a); Md. Pub.Util.Code Ann. § 2-205; Minn. Stat. § 8.33; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

<sup>2</sup> FCC 07-22. NASUCA did not file initial comments in response to the FNPRM. FCC 07-22 also contained a Report and Order (“2007 CPNI Order”).

measures for the protection of consumers' information.<sup>3</sup> Similarly, the New Jersey Division of Rate Counsel recommends protection measures.<sup>4</sup> NASUCA supports those proposals.

On the other hand, comments from the telecommunications industry uniformly oppose any new regulations.<sup>5</sup> The positions expressed in these comments deserve to be rejected.

The members of the industry claim they are dedicated to protecting their customers' privacy.<sup>6</sup> They also contend that the regulations adopted in the 2007 CPNI Order are "more than sufficient" or "more than adequate" to protect consumers,<sup>7</sup> and additional rules are not needed.<sup>8</sup> Indeed, Time Warner says that the regulations proposed in the FNPRM are "wholly unnecessary."<sup>9</sup> But it should be noted that many of those

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<sup>3</sup> Comments of Consumer Action, Consumer Federation of America, Consumers Union, Electronic Privacy Information Center, National Consumers League, Privacy Activism, Privacy Journal, Privacy Rights Clearinghouse, U.S. Public Interest Research Groups and Utility Consumers' Action Network. Utility Consumers' Action Network is an affiliate member of NASUCA.

<sup>4</sup> The New Jersey Division of Rate Counsel is a NASUCA member.

<sup>5</sup> Comments were filed by American Association of Paging Carriers ("AAPC"); AT&T Inc. ("AT&T"); Comcast Corporation ("Comcast"); COMPTTEL; Embarq; Frontier Communications ("Frontier"); the ICORE Companies ("ICORE"); the Independent Telephone and Telecommunications Alliance ("ITTA"); the Iowa Telecommunications Association ("ITA"); MetroPCS Communications, Inc. ("MetroPCS"); the National Telecommunications Cooperative Association ("NTCA"); NuVox Communications and XO Communications, LLC ("NuVox/XO"); Qwest Communications Associations International, Inc. ("Qwest"); the Rural Cellular Association ("RCA"); Sprint Nextel Corporation ("Sprint"); Time Warner Inc. ("Time Warner"); T-Mobile USA, Inc. ("T-Mobile"); the United States Telecom Association ("USTA"); USA Mobility, Inc. ("USAM"); Verizon; and Vonage Holdings Corporation ("Vonage").

<sup>6</sup> See, e.g., AT&T Comments at 2; Comcast Comments at 2; Frontier Comments at 5; ICORE Comments at 2; ITTA Comments at 2; Qwest Comments at 2; T-Mobile Comments at 1; USTA Comments at 1; Vonage Comments at 1-2.

<sup>7</sup> See, e.g., AT&T Comments at 2; ICORE Comments; ITTA Comments at 1; ITA Comments at 2; MetroPCS Comments at 2; NuVox/XO Comments at 1; USAM Comments at 2.

<sup>8</sup> Embarq Comments at 1; Frontier Comments at 5; ITA Comments at 1-2; NTCA Comments at 1; Sprint Comments at ii.

<sup>9</sup> Time Warner Comments at 2.

same parties strongly opposed the consumer protection measures adopted in the 2007 CPNI Order, often in the same sweeping terms as those in response to the FNPRM.<sup>10</sup> In the views of many of these parties, an absence of any regulation would be more than adequate to protect consumers. They are wrong; consumer protection regulation must continue in order to meet the public interest.

The industry commenters also stress that the rules adopted in the 2007 CPNI Order have not yet become effective, and ask the Commission not to implement *new* regulations before they have an opportunity to implement those regulations.<sup>11</sup> Given the different reach of many of the policies currently under consideration in the FNPRM from the rules adopted in the 2007 CPNI Order, such delay is not warranted and these suggestions should be disregarded.

On the other hand, USAM cites the Commission's 1999 decision not to impose additional CPNI requirements (including those like the ones set out in the FNPRM) as avoiding "regulatory micro-management."<sup>12</sup> Yet the problems involved with disclosure of consumers' information in 1999 were different, as witnessed by the rules adopted in the 2007 CPNI Order.

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<sup>10</sup> See, e.g., Comments of AT&T (at 2); MetroPCS (at 2); NTCA (at 1); Qwest (at 6-7); Sprint (at i-ii); T-Mobile (at ii); Verizon (at ii-iii) (all filed April 28, 2006).

<sup>11</sup> See, e.g., AT&T Comments at 2; Comcast Comments at 4; COMPTTEL Comments at 1; Embarq Comments at 1; NuVox/XO Comments at 2; Sprint Comments at i; Time Warner Comments at 2; T-Mobile Comments at 2; Vonage Comments at 1.

<sup>12</sup> USAM Comments at 2-3, citing *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 (1999), at ¶ 7(e).

Another error in the industry’s comments is the assumption that the Commission’s sole focus here is on data brokers and pretexters.<sup>13</sup> That may have been largely true for the 2007 CPNI Order,<sup>14</sup> but the FNPRM explicitly describes the broader reach of the current inquiry: “Through this Further Notice of Proposed Rulemaking, we seek comment on whether the Commission should act **to expand its CPNI rules further**, and whether it should **expand the consumer protections to ensure that customer information and CPNI are protected in the context of mobile communication devices.**”<sup>15</sup>

Various segments of the industry also request for exemption from any new rules.<sup>16</sup> Some of the requests are based on the possibility of lack of harm to consumers,<sup>17</sup> but others are based on the supposed burdens on the carriers: For example, NTCA would exempt “small businesses” from the requirements proposed in the FNPRM.<sup>18</sup> NTCA’s proposal implies that the customers of small businesses are somehow less deserving of protection than the customers of “large businesses,” a concept that should be a non-starter. Likewise RCA’s request for exemption for small and regional wireless carriers should be rejected.<sup>19</sup> If such exemptions were granted, potential customers of these

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<sup>13</sup> See, e.g., AAPC Comments at 3; MetroPCS Comments at 2, 3; Time Warner Comments at 8.

<sup>14</sup> 2007 CPNI Order, ¶ 2.

<sup>15</sup> FNPRM, ¶ 67 (emphasis added).

<sup>16</sup> See, e.g., AAPC Comments at 2, USAM Comments at 1 (paging carriers); MetroPCS Comments at 3 (prepaid wireless carriers).

<sup>17</sup> Id.

<sup>18</sup> NTCA Comments at 1.

<sup>19</sup> RCA Comments at 2.

smaller carriers should be warned that, because of the carriers' size, their CPNI will be more at risk than it would be if they subscribed to a larger carrier.

Several points require specific rebuttal. First, AT&T argues that the Commission should not impose new rules that dictate the manner in which customer data is removed from mobile devices when they are refurbished.<sup>20</sup> AT&T asserts that the Commission should rely on "industry best practices, which enable mobile devices to be refurbished in a cost-effective fashion that serves the interests of the price-sensitive consumers who are the ultimate beneficiaries of refurbished handsets."<sup>21</sup> Those consumers may be the ultimate beneficiaries of the refurbished equipment, but it is not those consumers whose personal information is at risk if personal data is not effectively removed; it is the consumers who possessed the devices **before** the devices were refurbished. NASUCA submits that the interests of the consumers whose data is at risk should be paramount in this instance, even if we recognize a slight impact on the "price-sensitive" ultimate possessors of the mobile devices.

Verizon asserts that password requirements for the disclosure of CPNI "would violate the First Amendment."<sup>22</sup> Verizon's arguments should sound familiar to the Commission, since they are virtually identical to those raised by Verizon on the opt-in/opt-out issue in the round of comments that led to the 2007 CPNI Order.<sup>23</sup> It thus would appear that the arguments would also apply to the Commission's decision in the 2007 CPNI Order. The Commission should await Verizon's appeal of that decision on

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<sup>20</sup> AT&T Comments at 3.

<sup>21</sup> Id.

<sup>22</sup> Verizon Comments at 10.

<sup>23</sup> Verizon Comments (April 28, 2006) at 22-26.

this issue before conceding the point. In any event, Verizon does not really attempt to distinguish the password rules adopted in the 2007 CPNI Order from those under discussion in the FNPRM.

Also with regard to the password issue, Time Warner asserts that “if a subscriber who lost his password were required to receive a response by mail to receive such routine information [as non-call detail CPNI], it could jeopardize the overall customer-carrier relationship.”<sup>24</sup> Yet if all carriers are required to undertake such measures, any disturbance to the customer-carrier relationship will likely have no impact between or among carriers. On the other hand, if a customer discovers that his non-call detail CPNI has been revealed to third parties because the carrier has not required a password, the customer’s reaction -- running the gamut from irritation to outrage -- will certainly have an adverse impact on the customer-carrier relationship.

In the end, MetroPCS exemplifies the central problem with industry’s comments here, stating, “[C]arriers must have the flexibility to serve their customers -- including their customers’ privacy concerns -- in the manner that best fits with their service models and business realities without regulatory intervention.”<sup>25</sup> That is an argument for the absence of any regulation, an argument that the Commission affirmatively rejected in the 2007 CPNI Order, when it adopted rules in order to protect consumers from the use of “service models and business realities” in ways that result in harm.

Likewise, Qwest asserts that there is “no record that carriers act in a chronically casual manner in the treatment of customer information or negligently with regard to its

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<sup>24</sup> Time Warner Comments at 8 (footnote omitted).

<sup>25</sup> MetroPCS Comments at 3 (footnote omitted); see also Qwest Comments at 3.

release.”<sup>26</sup> It is not “casualness” or negligence that is the primary concern here; rather the concern is that the carriers will undertake activities consistent with their service models or business realities that take advantage of the “carrier-customer relationship,”<sup>27</sup> which, although “both parties hope will be responsive, efficient and satisfying,”<sup>28</sup> all too often is none of those things.

Respectfully submitted,

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<sup>26</sup> Qwest Comments at 2.

<sup>27</sup> Id.

<sup>28</sup> Id.