

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 THE  
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION  
THE ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF  
SMALL TELECOMMUNICATIONS COMPANIES  
and the  
INDEPENDENT TELEPHONE AND TELECOMMUNICATIONS ALLIANCE  
IN SUPPORT OF PETITIONS FOR RECONSIDERATION**

The National Telecommunications Cooperative Association (“NTCA”),<sup>1</sup> the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”)<sup>2</sup> and the Independent Telephone and Telecommunications Alliance (“ITTA”)<sup>3</sup> (collectively, “the Associations”), submit these comments in support

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<sup>1</sup> NTCA represents more than 570 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service incumbent local exchange carriers (ILECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Act.

<sup>2</sup> OPASTCO is a national trade association representing over 520 small ILECs serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

<sup>3</sup> ITTA represents mid-size ILECs that provide wireline and wireless voice, data, Internet and video telecommunications services to more than 13 million customers in 43 states.

of petitions for reconsideration of the CPNI Order released April 2<sup>4</sup> filed by CTIA – The Wireless Association (“CTIA”)<sup>5</sup> and the United States Telecom Association (“USTelecom”).<sup>6</sup> The Associations support the requests of CTIA and USTelecom for the Commission to reconsider the CPNI Order to the extent that it creates a presumption that carriers have failed to take “reasonable measures” in all instances of unauthorized access to Customer Proprietary Network Information (CPNI).

In its CPNI Order, the Commission “put carriers on notice that 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.”<sup>7</sup> The Commission will require a carrier to demonstrate that the steps it took to protect its customer’s CPNI are reasonable. The Commission thus impermissibly places the burden of proof on carriers to prove their adherence to the CPNI rules in enforcement proceedings.

Both CTIA and USTelecom provide an in-depth legal analysis of the Commission’s burden.<sup>8</sup> In short, the Administrative Procedure Act (APA) at Section 556(d), the enforcement regime in the Communications Act, federal court decisions, and Commission precedent place the burden of proof in enforcement proceedings on the Commission.

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<sup>4</sup> Report and Order, *Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, 22 FCC Rcd 6927 (rel. April 2, 2007) (“CPNI Order”)

<sup>5</sup> Petition for Reconsideration of CTIA – The Wireless Association of the CPNI Order (filed July 9, 2007) (“CTIA Petition”).

<sup>6</sup> United States Telecom Association, Petition for Clarification or Reconsideration of the CPNI Order (filed July 9, 2007) (“US Telecom Petition”).

<sup>7</sup> See *Report and Order*, ¶ 63.

<sup>8</sup> See CTIA Petition, pp. 5-16, US Telecom Association Petition, pp. 2-6.

The CPNI rules as they read today assume carrier fault whenever there is a CPNI breach. However, the fact of a pretexter successfully obtaining customer information through fraud or misrepresentation is not indicative of how the information was obtained, or of the carrier's role in disclosure. There is no reason to infer that a carrier has not satisfied its legal obligation to take "reasonable measures" to protect CPNI simply because a pretexter is successful in its efforts.

Pretexters use sophisticated and evolving methods to obtain information and carriers must be diligent in their efforts to combat them. But information may be obtained in a variety of other ways, as well. Customers share their passwords with family members and friends, compromising the security of their own accounts. As the Chair of the Federal Trade Commission has noted, it is impossible for carriers to protect against every conceivable future occurrence of unauthorized access with 100% success.<sup>9</sup>

The small and mid-size telecommunications carriers recognize the need to protect their customers' sensitive personal information and have every incentive to do so. Pretexting is a practice that must be curtailed by strong and swift enforcement measures. However, the Commission's rules should not place the burden of proof on carriers whenever a third party impermissibly or illegally obtains information. The Commission

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<sup>9</sup> See Remarks of Deborah Platt Majoras, Chairman, FTC, at the U.S. Chamber of Commerce, Dec. 5, 2006, as cited in CTIA's petition, p. 9.

should reconsider or clarify that the CPNI Order does not place the burden of proof on carriers in enforcement proceeding in which it is alleged that CPNI has been obtained through pretexting.

Respectfully submitted,

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COOPERATIVE ASSOCIATION

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August 6, 2007

## CERTIFICATE OF SERVICE

I, Adrienne Rolls, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in CC 96-115, WC 04-36, was served on this 6<sup>th</sup> day of August 2007 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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