

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Telecommunications Carriers' Use of Customer Proprietary Network Information (CPNI) and Other Customer Information)	CC Docket No. 96-115
)	
Information Collection Being Submitted for Review and Approval to the Office of Management and Budget)	OMB 3060-0715
)	

**COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION AND
THE VOICE ON THE NET COALITION**

The USTelecom Association (USTelecom)¹ and the Voice on the Net Coalition (VON)² submit these comments in response to the notice³ released by the Federal Communications Commission (Commission or FCC) seeking comment pursuant to the Paperwork Reduction Act (PRA) of 1995⁴ (PRA Notice) on the extension of a currently approved collection associated with

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecom industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications service to both urban and rural markets. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

² The VON Coalition is the leading advocacy organization for the Internet communications industry, working with legislators, regulators, and other policymakers to develop policies that support the availability and adoption of Internet communications products and services. For more information see www.von.org.

³ Notice and Request for Comments, *Information Collection Being Reviewed by the Federal Communications Commission*, 82 FR 21814 (May 10, 2017).

⁴ Paperwork Reduction Act of 1995, Pub. L. 104-13, 109 Stat. 163 (1995), *codified at* 44 U.S.C. 3501 *et seq.*

the above proceeding.⁵ The Commission should not renew the approved collection⁶ as is. Instead, the Commission should modify the existing collection to eliminate the additional Customer Proprietary Network Information (CPNI) administrative requirements in Section 64.2009⁷ of the Commission rules, including the annual certification requirement⁸. It is important to note that USTelecom, VON and their members are fully committed to protecting the privacy of their customers' data. We are not advocating for the removal of the Commission's current privacy rules for voice service as a whole. In these comments, USTelecom and VON object under the Paperwork Reduction Act to continuing this specific information collection because the unnecessary paperwork burden outweighs whatever benefit it provides, and because eliminating the collection would not negatively affect consumers. The relief would not affect the remaining rules related to customer notice, choice, and consent, or the rules related to data security and breach notification. Those rules would remain in place. The changes USTelecom and VON support would better reflect the PRA's goals and requirements since the remaining rules are those which have practical impact on customers. If, however the Commission elects not to entirely eliminate Section 64.2009 of the Commission rules, it should reduce the compliance burden by eliminating the annual certification requirement.

⁵ *In the Matter of Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061(1998); Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860; (2002); Report and Order and Further Notice of Proposed Rulemaking 22 FCC Rcd 6927 (2007).

⁶The currently approved collection includes all FCC's rules implementing Section 222 of the Act (i.e., 47 CFR 64.2009, 47 CFR 64.2003, 47 CFR 64.2007, 47 CFR 64.2010, 47 CFR 64.2011, 47 CFR 64.2309, 47 CFR 64.2313, 47 CFR 64.2317, 47 CFR 64.2329, 47 CFR 64.2005, 47 CFR 64.2337, 47 CFR 64.2341).

⁷ See 47 C.F.R. §64.2009.

⁸ 47 C.F.R. §64.2009(e)

I. THE COMMISSION’S CURRENT REQUIREMENTS ARE AN UNNECESSARY REGULATORY BURDEN ON CARRIERS AND INTERCONNECTED VOIP PROVIDERS

The annual certification requirement and other regulatory obligations required by Section 64.2009 of the Commission’s rules are both unnecessary and burdensome. For this very reason, the FCC’s October 2016 order did not include any of the current 64.2009 provisions.⁹ These administrative requirements, including the requirement that a carrier or interconnected VoIP provider submit an annual certification, provide no meaningful substantive benefit to protect consumers’ private information. The original basis for the annual certification, as well as the other requirements of §64.2009, was to act as a safeguard to ensure that carriers were complying with the customer notice, consent and choice provisions of the CPNI rules. The safeguards established by §64.2009 are no longer necessary since the customer notice, consent and choice rules have been in effect for so long that compliance is already a well-established part of carriers’ and VoIP providers’ operating systems.

Although there may have been a need for the §64.2009 rules when adopted in 1998, the rules are no longer necessary.¹⁰ Although they have been amended over time,¹¹ the CPNI rules have been a core part of carriers’ operations in one form or another for nearly 20 years. It no

⁹ See *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, [Report and Order](#), WC Docket No. 16-106, FCC 16-148 ¶ 234 (rel. Nov. 2, 2016) (“*2016 Privacy Order*”) (“We eliminate the specific compliance recordkeeping and annual certification requirements in Section 64.2009 for voice providers... We find that carriers are likely to keep records necessary to allow for any necessary enforcement without the need for specific requirements, and that notifications of data breaches to customers and to enforcement agencies (including the Commission) will ensure compliance with the rules and a workable level of transparency for customers.”)

¹⁰ *In the Matter of Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061(1998); Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860; (2002); Report and Order and Further Notice of Proposed Rulemaking 22 FCC Rcd 6927 (2007).

longer makes sense to mandate by regulation that carriers and interconnected VoIP providers implement a system to allow the customer's CPNI status to be easily determined before it is used or that carriers and interconnected VoIP providers train their employees in the proper use of CPNI.¹² After 20 years, carriers and interconnected VoIP providers already take these steps as a business necessity.

It is not only burdensome, but also unnecessary to require an officer of the company to certify on an annual basis that, "he or she has personal knowledge that the company has established operating procedures that are adequate to ensure compliance."¹³ And requiring such a recertification annually creates unnecessary regulatory hurdles that outweigh any benefits. Continuing this requirement therefore conflicts with the Paperwork Reduction Act¹⁴ primary purpose "to reduce, minimize and control burdens and maximize the practical utility and public benefit."¹⁵

In particular, requiring an officer certification goes beyond what is necessary for the Commission to ensure that customers' private information is protected. Requiring carriers and interconnected VoIP providers to have the certification made at the officer level¹⁶ increases the burden because to get a signed certification at the officer level companies have to jump through many layers of administrative hoops creating an unnecessarily high threshold for this compliance requirement. Companies have other employees who have authority to certify on the company's behalf that do not require such a high administrative burden as requiring an officer certification,

¹² See 47 C.F.R. §64.2009(a)-(b).

¹³ See 47 C.F.R. §64.2009(e).

¹⁴ Paperwork Reduction Act of 1995, Pub. L.104-13, 109 Stat. 163 (1995), *codified at* 44 U.S.C. 3501 *et seq.*

¹⁵ 5 C.F.R. § 1320.1.

¹⁶ 47 C.F.R. §64.2009(e).

yet achieve the same result. Adding the additional administrative and practical burden to get an annual certification signed by an officer is not a worthwhile exercise.

Section 64.2009 also requires carriers and interconnected VoIP providers to implement procedures by which the status of a customer's CPNI approval can be clearly established prior to the use of CPNI,¹⁷ provide employee training in the authorized use of CPNI,¹⁸ including the establishment of a supervisory review process for sales personnel and marketing,¹⁹ as well as maintain a record for one year of all marketing campaigns that use customer CPNI,²⁰ and provide notice to the FCC within five days of an opt-out failure.²¹ All of these administrative requirements are burdensome and should be eliminated. Like the others in this section they have grown unnecessary over time and fail to provide any benefit to consumers.

The Commission continues to underestimate that burden, and others, associated with the obligations associated with Section 64.2009 compliance. Carriers and interconnected VoIP providers are required to invest significant time, resources, and personnel to comply with this information collection requirement.

Removing these types of regulatory barriers is just what the Commission has called for in other proceedings. For example in its recently adopted Notice of Proposed Rulemaking (NPRM) on Earth Stations, the Commission determined that it had almost identical rules for satellite earth stations on land vehicles as it did for satellite earth stations on aircraft which it called

¹⁷ 47 C.F.R. §64.2009(a).

¹⁸ 47 C.F.R. §64.2009(b).

¹⁹ 47 C.F.R. §64.2009(d).

²⁰ 47 C.F.R. §64.2009(c).

²¹ 47 C.F.R. §64.2009(f).

duplicative, unnecessary and inefficient.²² In his statement on this NPRM, Chairman Pai noted that two of the Commission's core goals are reducing unnecessary red tape and enabling the private sector so that they can innovate and invest in new technologies.²³ Removal of the administrative burdens required by the CPNI rules falls squarely within these two core goals. It would reduce unnecessary red tape and allow competing carriers and interconnected VoIP providers to spend resources more efficiently.

II. ANY REASONABLE REVIEW OF THE COLLECTION SHOULD INCLUDE AN UPDATED COST-BENEFIT ANALYSIS AND DISCUSSION OF THE PRACTICAL UTILITY OF THE INFORMATION COLLECTION TO THE COMMISSION AND/OR THE PUBLIC.

The Commission has not performed an updated cost-benefit analysis to continue requiring the §64.2009 obligations listed in the information collection. The instant information collection notice does not mention any practical utility that it will provide to the Commission or the public. In its 2014 submission to OMB, the Commission estimates that respondents will take approximately 3 hours annually to comply with the requirement that they file their compliance certificate. As detailed in the justification memo, this equates to 10,800 hours and \$953,035.20 annually. This estimate is grossly understated. The burden in this collection alone is 212,907 hours and \$4,000,000. However, although carriers and interconnected VoIP providers already have other safeguards built into their operating systems, the review process – outside of this opportunity to comment - does not include an opportunity to refresh the record or entertain

²² See *In the Matter of the Amendment of Parts 2 and 25 of the Commission's Rules to Facilitate the Use of Earth Stations in Motion Communicating with Geostationary Orbit Space Stations in Frequency Bands Allocated to the Fixed Satellite Service*, IB Docket No. 17-95 (May 18, 2017).

²³ See Statement of Chairman Ajit Pai, *In the Matter of Amendment of Parts 2 and 25 of the Commission's Rules to Facilitate the Use of Earth Stations in Motion Communicating with Geostationary Orbit Space Stations in Frequency Bands Allocated to the Fixed Satellite Service*, IB Docket No. 17-95.

updated analysis or discussion of whether these additional costs continue to outweigh the burden that providers will face if required to continue their compliance.

Similarly, nothing in the information collection demonstrates how continuing the §64.2009 obligations will have practical utility to the Commission and the public. The PRA defines “practical utility” as “the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion.”²⁴ OMB’s rules clarify that “practical utility means the actual, not merely the theoretical or potential, usefulness of information.”²⁵ The rules also require that an agency establish a “plan for the efficient and effective management and use of the information to be collected.”²⁶

The OMB has repeatedly disapproved of information collections when the agency failed to demonstrate the “practical utility” of the collection in question. Nothing in the Commission’s most recent justification memo demonstrates how the current §64.2009 information collection will have a practical utility that justifies the immense burden it will impose on covered entities. Absent such a demonstration, the Commission’s §64.2009 information collection cannot withstand scrutiny under the PRA.

²⁴ 44 U.S.C. § 3502(11).

²⁵ 5 C.F.R. § 1320.3(l).

²⁶ 5 C.F.R. § 1320.8(a)(7).

III. CONCLUSION

For the reasons discussed herein, the Commission should decline to renew this collection requirement, as is. Instead, the Commission should modify the collection to remove 64.2009, since it no longer has practical utility to the Commission or the public and the estimate of the financial burden to comply has been significantly understated,

Respectfully submitted,

USTELECOM ASSOCIATION



By: _____

B. Lynn Follansbee
Jonathan Banks

Its Attorneys
601 New Jersey Avenue, NW, Suite 600
Washington, D.C. 20001
202-326-7300

VOICE ON THE NET COALITION

By: /s/ Glenn S. Richards

Glenn S. Richards

Its Attorney
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street, NW
Washington, DC 20036
(202) 663-8000

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