

FCC FACT SHEET*

Rules and Policies Regarding Calling Number Identification Service – Caller ID

Notice of Proposed Rulemaking – CC Docket No. 91-281

Background: Media and law enforcement reports indicate that the number of threatening calls targeting schools, religious organizations, and other entities appears to be increasing dramatically. These calls traumatize communities and leave schoolchildren fearful. The threats also expend public resources by requiring the deployment of police and bomb units. In many cases, the perpetrators block the Caller ID information (such as by dialing *67), making it difficult to trace the threatening calls. The Commission's current rules require that carriers not reveal blocked Caller ID information or use that information to allow the called party to identify or contact the caller. Recognizing that threatening callers do not have a legitimate privacy interest in having blocked Caller ID protected from disclosure, the *Notice of Proposed Rulemaking* proposes to amend the Commission's rules to ensure that all threatened parties and associated law enforcement personnel have quick access to the information they need to identify and thwart threatening callers. At the same time, the NPRM recognizes the privacy interests of legitimate callers who may have valid reasons to block their telephone numbers.

What the NPRM Would Do:

- Propose to amend the Commission's Caller ID rules to recognize an exemption from privacy protections to allow called parties and law enforcement to obtain blocked Caller ID information in the limited case of threatening calls.
- Propose defining a "threatening call" as any call that includes a threat of serious and imminent unlawful action posing a substantial risk to property, life, safety, or health.
- Seek comment on extending the current exemption for public emergency services to non-public entities that provide emergency services, such as private ambulance companies, so that they can readily obtain blocked Caller ID information for callers who request assistance.
- Ask whether to require anyone reporting a threatening call for the purpose of obtaining blocked Caller ID information to do so in conjunction with a law enforcement agency, so as to provide some assurance that the called party is not attempting to circumvent the privacy obligations of the rule by reporting a false threat.
- Ask whether parties who obtain Caller ID information under the proposed exemption should ensure that this information is disclosed only to authorized personnel for purposes of investigating threatening calls, so as to protect any legitimate expectation of privacy by non-threatening callers.
- Confirm that Jewish Community Centers and the carriers who serve them may continue to obtain, under a temporary waiver, blocked Caller ID information associated with threatening calls until the Commission decides whether to adopt a permanent exemption for all similarly situated parties.

* This document is being released as part of a "permit-but-disclose" proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in CC Docket No. 91-281, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission's *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. See 47 CFR § 1.1200 *et seq.*

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Rules and Policies Regarding Calling Number) CC Docket No. 91-281
Identification Service – Caller ID)
)
Waiver of Federal Communications Commission)
Regulations at 47 C.F.R. § 64.1601(b) on Behalf)
of Jewish Community Centers)

NOTICE OF PROPOSED RULEMAKING*

Adopted: []

Released: []

Comment Date: [30 days after date of publication in the Federal Register]

Reply Comment Date: [60 days after date of publication in the Federal Register]

By the Commission:

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking, we propose to amend our Caller ID rules to enable called parties and/or law enforcement to obtain blocked Caller ID information in connection with threatening calls.¹

2. In recent years, media and law enforcement reports indicate that the number of threatening calls appears to be increasing dramatically.² These calls result in substantial disruption among schools,

* This document has been circulated for tentative consideration by the Commission at its June 2017 open meeting. The issues referenced in this document and the Commission’s ultimate resolutions of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The Commission’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 CFR §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

¹ For purposes of this NPRM, we define a “threatening call” as any call that includes a threat of serious and imminent unlawful action posing a substantial risk to property, life, safety, or health.

² See, e.g., Eric Levenson and AnneClaire Stapleton, Jewish Center Bomb Threats Top 100; Kids Pulled from Schools (Mar. 13, 2017), http://www.cnn.com/2017/02/28/us/bomb-threats-jewish-centers-jcc/ (reporting over 100 threats to 80 Jewish Community Centers); Associated Press, Statistics: Bomb Threats to Schools in New Hampshire are Up (Aug. 21, 2016), http://www.washingtontimes.com/news/2016/aug/21/statistics-bomb-threats-to-schools-in-new-hampshir/ (reporting an increase in threats to New Hampshire schools); United States Bomb Data Center, Bomb Threats across the U.S. (May 24, 2016), https://www.atf.gov/resource-center/docs/bomb-threats-across-us/download (finding an 84% increase in bomb threats to schools from 2010-2016 and an increase in bomb threats to residences) (ATF Report); Richard J. Bayne, Swatting Epidemic ‘out of control’ in Middletown School District (Feb. 27, 2016), http://www.recordonline.com/news/20160227/swatting-epidemic-out-of-control-in-middletown-school-district (reporting a rash of threats made to various schools in New York and the adverse impact on students); James Fisher, More School Threats in Region; FBI Assisting (Jan. 19, 2016),

religious organizations, and other entities, which has traumatized communities and left schoolchildren fearful. These threats also expend public resources by requiring the deployment of police and bomb units in response. Prior waiver petitions indicate that the ability to block Caller ID hinders a rapid response to the threat.³ Recognizing that threatening callers do not have a legitimate privacy interest in having blocked Caller ID protected from disclosure, the Commission has previously assisted law enforcement investigations on a case-by-case basis by waiving our rule that otherwise prohibits such disclosure.⁴

3. Because threatening calls with blocked Caller ID information continue to vex the public, we believe a more streamlined approach is necessary to help protect their safety in a timely way. Today, we propose amending our rules to ensure that all threatened parties and associated law enforcement personnel have quick access to the information they need to identify and thwart threatening callers, without the regulatory delay inherent in applying for and being granted a waiver of our rules. In so doing, we recognize the privacy interests of legitimate callers who may have valid reasons to block their telephone numbers. We limit our proposed exemption to our current rule to those situations that involve threatening calls of a serious and imminent nature. Only law enforcement personnel and others responsible for the safety and security of the threatened party will have access to otherwise protected Caller ID information in the case of threatening calls.

4. In addition, we determine that the temporary waiver of section 64.1601(b) of the Commission's rules⁵ previously granted to Jewish Community Centers (JCCs)⁶ and any carriers that serve JCCs remains in place until the Commission determines whether to amend its rules as described above. The record provides good cause to maintain that waiver because of the large number of recent threatening calls targeting these facilities, as well as the substantial disruption and fear caused as a result.⁷

II. BACKGROUND

A. The CPN Rules

5. In 1994, the Commission adopted rules that require common carriers using Signaling System 7 (SS7) to transmit the Calling Party Number (CPN)⁸ on interstate calls to interconnecting carriers.⁹ The

<http://www.delawareonline.com/story/news/local/2016/01/19/fresh-round-school-threats-tuesday/78999668/> (reporting multiple phone threats to schools in Delaware, Virginia, Maryland, and Massachusetts).

³ See, e.g., *Petition of Enlarged City School District of Middletown for Waiver of Federal Communications Commission Regulations at 47 C.F.R. 64.1601(b)* at 5 (filed Feb. 29, 2016) (confirming that it has been hindered by section 64.1601(b) in identifying threatening callers) (*Middletown Petition*).

⁴ See, e.g., *Rules and Policies Regarding Calling Number Identification Service – Caller ID; Petition of National Aeronautics and Space Administration for Waiver of Federal Communications Commission Regulations at 47 CFR § 64.1601(b)*, CC Docket No. 91-281, Order, 27 FCC Rcd 5704 (CGB 2012) (*NASA Order*); *Rules and Policies Regarding Calling Number Identification Service – Caller ID, Petition of Enlarged City School District of Middletown for Waiver of Federal Communications Commission Regulations at 47 CFR 64.1601(b)*, CC Docket No. 91-281, Order, 31 FCC Rcd 3565 (CGB 2016) (*Middletown Waiver*).

⁵ 47 CFR § 64.1601(b).

⁶ See *Rules and Policies Regarding Calling Number Identification Service – Caller ID, Waiver of Federal Communications Commission Regulations at 47 CFR 64.1601(b) on Behalf of Jewish Community Centers*, CC Docket No. 91-281, Temporary Waiver Order (DA 17-223) (rel. Mar. 3, 2017) (*JCC Temporary Waiver Order*).

⁷ See, e.g., AT&T Services Comments at 2; Shira Fischer Comments; TDR Technology Comments.

⁸ The Commission's rules define CPN as "the subscriber line number or the directory number contained in the calling party number parameter of the call set-up message associated with an interstate call on a Signaling System 7 network." 47 CFR § 64.1600(e). Associated with the CPN is a Privacy Indicator "that indicates whether the calling party authorizes presentation of the calling party number to the called party." *Id.* § 64.1600(j).

Commission concluded that passage of CPN over interstate facilities made possible a wide range of services, and that promoting the development of such services was consistent with the Commission's responsibilities under the Communications Act of 1934, as amended (the Act).¹⁰ In particular, the Commission concluded that requiring CPN transmission would bring consumers more rapid and efficient service, and encourage the introduction of new technologies and services to the public.¹¹

6. In adopting this requirement, however, the Commission recognized that unrestricted CPN transmission could intrude upon the privacy interests of calling parties wishing to remain anonymous.¹² Therefore, the Commission established privacy options to allow callers to restrict the transmission of their telephone numbers.¹³ For example, the Commission's rules require carriers using SS7 to recognize the dialing of *67 as a request that the carrier not pass the calling party's number.¹⁴ In addition, carriers providing privacy on all calls dialed from a particular line will recognize dialing *82 as a caller's request that the CPN be passed through on an interstate call.¹⁵ Section 64.1601(b) of the Commission's rules provides that "[n]o common carrier subscribing to or offering any service that delivers CPN may override the privacy indicator associated with an interstate call."¹⁶

7. The Commission has found, however, that in certain limited circumstances, the public interest requires CPN transmission despite any countervailing privacy request from the calling party. For example, the Commission concluded that, "[t]o the extent that CPN-based services are used to deliver emergency services, we find that privacy requirements for CPN-based services should not apply to delivery of the CPN to a public agency's emergency line, a poison control line, or in conjunction with 911 emergency services."¹⁷ In addition, the Consumer and Governmental Affairs Bureau (CGB) has found good cause to grant limited waivers of the CPN privacy options in specific instances where it has been demonstrated that such waivers serve the public interest.¹⁸ For example, the Bureau has waived the rule

⁹ See *Rules and Policies Regarding Calling Number Identification Service – Caller ID*, CC Docket No. 91-281, Report and Order and FNPRM, 9 FCC Rcd 1764 (1994) (*Caller ID Order*); see also 47 CFR § 64.1601(a).

¹⁰ *Caller ID Order*, 9 FCC Rcd at 1769, para. 34.

¹¹ *Id.* at 1766, para. 8.

¹² *Id.* at 1769, para. 34.

¹³ See 47 CFR § 64.1601(b); see also *Rules and Policies Regarding Calling Number Identification Service – Caller ID*, Memorandum Opinion and Order on Reconsideration, Second Report and Order and Third Notice of Proposed Rulemaking, CC Docket No. 91-281, 10 FCC Rcd 11700, 11728-29, paras. 81-84 (1995) (*Caller ID Reconsideration Order*).

¹⁴ 47 CFR § 64.1601(b).

¹⁵ See *Caller ID Reconsideration Order*, 10 FCC Rcd at 11728-29, paras. 81-84; see also 47 CFR § 64.1601(b).

¹⁶ In addition, section 64.1601(b) provides that, "[c]arriers must arrange their CPN-based services, and billing practices, in such a manner that when a caller requests that the CPN not be passed, a carrier may not reveal that caller's number or name, nor may the carrier use the number or name to allow the called party to contact the calling party." 47 CFR § 64.1601(b).

¹⁷ *Caller ID Order*, 9 FCC Rcd at 1770, para. 37; see also 47 CFR § 64.1601(d)(4)(ii). In addition, our rules exempt "legally authorized call tracing or trapping procedures specifically requested by a law enforcement agency." 47 CFR § 64.1601(d)(4)(iii).

¹⁸ See *INSIGHT 100 Petition for Waiver of § 64.1601(b) Regarding the Transmission of Calling Party Number*, CC Docket No. 91-281, Memorandum Opinion and Order, 17 FCC Rcd 223 (CCB 2002) (*INSIGHT Order*) (waiving section 64.1601(b) on behalf of certain universities and hospitals); *Rules and Policies Regarding Calling Number Identification Service – Caller ID; Petition of Chevrah Hatzalah Volunteer Ambulance Corps Inc. for Waiver of Section 1601(b) of the Commission's Rules – Blocked Telephone Numbers*, CC Docket No. 91-281,

in response to requests from school districts that had received bomb threats, while at the same time committing to ensure that access to CPNs would be very limited notwithstanding a waiver.¹⁹

B. The Jewish Community Centers Temporary Waiver

8. On February 28, 2017, Senator Charles E. Schumer submitted a letter to the Commission expressing concern regarding recent bomb threats made via phone against various JCCs in New York and across the nation.²⁰ Senator Schumer noted that the Commission has played a valuable role to ensure law enforcement and others are not hindered in their access to caller information of threatening calls and suggested consideration of that option.²¹ On March 3, 2017, CGB granted to JCCs, and any carriers that serve JCCs, a temporary, emergency waiver of section 64.1601(b) of the Commission's rules.²² In so doing, CGB indicated that this temporary waiver would remain in effect until the Commission determined whether the waiver should be made permanent.²³ In addition, CGB sought comment on whether to make this waiver permanent.²⁴ Comments filed in response support the waiver.²⁵ These commenters note the public interest in promoting efforts to identify and thwart individuals making threatening calls to JCCs.²⁶ No commenter opposed the waiver.

III. DISCUSSION

A. Notice of Proposed Rulemaking

9. Based on reports of widespread and increasing numbers of threatening calls that have targeted schools, religious organizations and other entities, we propose amending section 64.1601 of our rules to ensure that all parties who receive threatening calls are not hindered by our rules in gaining timely access to CPN information that may allow them to identify threatening callers. One recent study found that the incidents of bomb threats made to schools from 2011-16 increased by 1,461 percent and that over half of such threats were made by phone.²⁷ Similarly, a 2016 report from the Bureau of Alcohol, Tobacco,

Order, 28 FCC Rcd 1253 (CGB 2013) (*Hatzalah Order*); *Petition of Liberty Public School District for Waiver of Federal Communications Commission Regulations at 47 CFR § 64.1601(b)*, CC Docket No. 91-281, Memorandum Opinion and Order, 28 FCC Rcd 6412 (CGB 2013) (*Liberty School Order*); *Middletown Order*, 31 FCC Rcd at 3565.

¹⁹ See, e.g., *Middletown Order*, 31 FCC Rcd at 3567-58, paras. 5-8; *Liberty School Order*, 28 FCC Rcd at 6414-15, paras. 5-6.

²⁰ See Letter from Senator Charles E. Schumer to Chairman Ajit Pai, FCC, dated Feb. 28, 2017 (Schumer Letter).

²¹ *Id.*

²² See *JCC Temporary Waiver Order*.

²³ *Id.* at para. 12.

²⁴ See *Consumer and Governmental Affairs Bureau Seeks Comment on Waiver Regarding Access to Calling Party Numbers Associated with Threatening Phone Calls Made to Jewish Community Centers*, CC Docket No. 91-281, Public Notice (DA 17-222) (rel. Mar. 3, 2017).

²⁵ See, e.g. AT&T Services Comments at 2; Shira Fischer Comments; TDR Technology Comments (suggesting that the scope of the waiver be broadened to include schools and other religious institutions).

²⁶ See AT&T Services Comments at 2-4 (“a permanent waiver of Rule 64.1601(b) prohibiting the overriding of the caller ID privacy indicator is clearly necessary to protect JCCs in light of the recent threats described by Senator Schumer and is fully justified by the Commission's rules and precedent”).

²⁷ See Dr. Amy Klinger and Amanda Klinger, Esq., *Bomb Incidents in Schools: An Analysis of 2015-16 School Year*, <http://eschoolsafety.org/bir-2016/> (last visited May 12, 2017).

Firearms and Explosives reports a substantial increase in bomb threats to schools and residences.²⁸ Other media reports confirm this disturbing trend.²⁹ Although the record does not indicate how often threatening callers use the privacy indicators required by section 64.1601(b), parties seeking waiver of the rule have asserted that they frequently do so.³⁰

10. We believe amending our Caller ID rules to permit threatened parties, law enforcement, and security personnel of threatened entities to gain access to the CPN of threatening callers could promote public safety and provide administrative efficiencies over the current process, which necessitates addressing individual waiver requests on a case-by-case basis.³¹ Even when threatening calls prove to be a hoax, they can often result in substantial disruption and expenditure of public resources by law enforcement. We therefore propose to amend our rules to recognize an exemption from the privacy protections contained in section 64.1601(b) in the limited case of threatening calls. We seek additional comment on ways to facilitate the ability of law enforcement and security personnel to investigate and identify threatening callers while protecting the legitimate privacy interests of non-threatening callers.

11. Section 64.1601(b) requires that carriers must act in accordance with the customer's privacy request that CPN not be passed on interstate calls.³² The Commission has recognized, however, certain exemptions to this requirement. The Commission has concluded, for example, that to the extent CPN-based services are used to deliver emergency services, privacy requirements should not apply to delivery of CPN to a public agency's emergency lines, a poison control line, or in conjunction with 911 emergency services.³³ In these instances, the Commission concluded that Caller ID blocking mechanisms could jeopardize emergency services and therefore pose a serious threat to the safety of life and property. We believe that threatening calls present equally compelling circumstances in which the need to ensure public safety, in accordance with the Commission's fundamental statutory mission,³⁴ outweighs the threatening caller's interest in maintaining the privacy of his or her CPN.

12. Specifically, we propose amending section 64.1601 of our rules to recognize an exemption to section 64.1601(b)'s prohibition on overriding a privacy indicator associated with an interstate call when

²⁸ See ATF Report: <https://www.atf.gov/resource-center/docs/bomb-threats-across-us/download> (finding an 84% increase in bomb threats to schools from 2010-2016 and a 184% increase in bomb threats to residences from 2013-14).

²⁹ See *supra* n.2.

³⁰ See, e.g., *Petition of National Aeronautics and Space Administration for Waiver of Federal Communications Commission Regulations at 47 C.F.R. 64.1601(b)* at 3 (filed Nov. 6, 2006) (confirming that "parties perpetrating these calls often use the CPN restrictions in order to prevent authorities from timely identifying their location"); *Petition of Liberty Public School District for Waiver of Federal Communications Commission Regulations at 47 C.F.R. 64.1601(b)* at 5 (filed Apr. 22, 2007) (confirming use of CPN restrictions by threatening callers); *Middletown Petition* at 5.

³¹ Comments filed in response to the recent JCC waiver request have suggested that the Commission broaden the scope to allow law enforcement to obtain the Caller ID of any threatening caller. See TDR Technologies Mar. 17 Comments at 3; Shira Fischer Mar. 17 Comments; Rachel Mar. 17 Comments ("If someone is making a threat to the life or physical safety of someone else, they should not be able to benefit from telephone privacy protections.").

³² See 47 CFR § 64.1601(b).

³³ See *id.* § 64.1601(d); *Caller ID Order*, 9 FCC Rcd at 1770, para. 37.

³⁴ See 47 U.S.C. § 151 (creating the FCC "[f]or the purpose of regulating interstate and foreign communication ... so as to make available ... a ... communication service ... for the purposes of promoting safety of life and property through the use of wire and radio communications").

such call contains a threat of a serious nature.³⁵ For purposes of this context, we propose defining a “threatening call” as any call that includes a threat of serious and imminent unlawful action posing a substantial risk to property, life, safety, or health. We seek comment on this definition and on any alternatives. Accordingly, we propose adding an exemption in section 64.1601(d) of our rules to exclude threatening calls from the privacy protections afforded by section 64.1601(b) as set forth in Appendix A.³⁶

13. In this context, we seek comment on how evaluations should be made to determine whether a threat meets our proposed definition of a threatening call, including who should make that evaluation. Should we require, for example, that otherwise restricted CPN be made available only after a law enforcement agency confirms that it constitutes a threat of a serious and imminent unlawful action posing a substantial risk to property, life, safety, or health? Would this approach provide sufficient privacy safeguards to ensure that blocked CPN is released only in those limited situations? Conversely, to what extent would involving law enforcement in this process hinder the ability of threatened parties to gain timely access to the CPN of threatening callers?

14. We seek comment on this proposal and any additional options that might aid law enforcement and threatened parties in obtaining the information they need to identify threatening callers. In addition, we seek comment on how to facilitate the provision of CPN to threatened entities in a manner that minimizes administrative burdens on carriers while ensuring that such information is provided to the threatened party and law enforcement in a timely manner. How are carriers burdened today when law enforcement uses lawful processes to compel disclosure of call details? In particular, we seek comment on the potential burdens on small providers that may be asked to disclose information upon a report of a threatening call, including measures that could mitigate those burdens. We recognize that telecommunications systems utilized by threatened entities and relationships with their carriers may vary widely. We therefore seek the input of carriers on how best to facilitate the process of providing CPN information in a timely manner to parties that report a threatening call. Given our existing exemption for public agencies that deliver emergency services as noted above, we also seek comment on whether we should extend that exemption to non-public entities that provide emergency services such as private ambulance companies.³⁷

15. *Privacy.* In proposing this amendment to our Caller ID rules, we endeavor to ensure that this exemption is not abused and that the legitimate privacy interests of non-threatening callers are not infringed, particularly when the calling party has a higher need for CPN blocking protections to mitigate the risk of personal injury, such as in the case of calls made from domestic violence agencies. When the Commission adopted the rule in 1994, it concluded based on an extensive record that “the calling public has an interest in exercising a measure of control over the dissemination of telephone numbers that must

³⁵ Section 64.1601(b) provides that “[n]o common carrier subscribing to or offering any service that delivers CPN may override the privacy indicator associated with an interstate call. Carriers must arrange their CPN-based services, and billing practices, in such a manner that when a caller request that the CPN not be passed, a carrier may not reveal that caller’s number or name, nor may the caller use the number or name to allow the called party to contact the calling party. See 47 CFR § 64.1601(b).

³⁶ We also note that in connection with the statutory protection of customer proprietary network information, section 222(d)(2) of the Act provides that “Nothing in this section prohibits a telecommunications carrier from using, disclosing, or permitting access to customer proprietary network information obtained from its customers, either directly or indirectly through its agents ... to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services.” 47 U.S.C. § 222(d)(2) (emphasis added).

³⁷ See, e.g., *Hatzalah Order*, 28 FCC Rcd 1253 (granting a waiver to a privately-operated ambulance company); 47 CFR § 64.1601(d)(4)(iii).

be reflected in federal policies governing caller ID services.”³⁸ As a result, the Commission adopted a rule requiring carriers to offer per-call blocking of Caller ID and allowed carriers to continue offering per-line blocking as long as they also provided per-call unblocking.³⁹ Because of this recognized privacy interest, we seek comment on whether we should require anyone reporting a threatening call for purposes of obtaining otherwise restricted CPN to do so in conjunction with a law enforcement agency, so as to provide some assurance that the called party is not attempting to circumvent the privacy obligations of the rule by reporting a false threat. Should access to restricted CPN be limited only to law enforcement authorities? Would the risk of abuse be further reduced by limiting application of this exemption only to non-residential entities such as schools, religious organizations, and other public and private business and governmental entities? Would excluding private individuals who are not typically the target of mass phone threats limit the potential for abuse of this exemption? We note, for example, that petitions seeking waivers on the basis of a pattern of threatening calls, including most press reports, relate to threatening calls that target entities such as these rather than private individuals. Finally, how would a carrier’s obligations under section 222 be affected? Is CPN that a caller intends to block protected by section 222,⁴⁰ and would a rule that requires or allows carriers to divulge blocked CPN conflict with section 222?

16. Are there other means to ensure that legitimate privacy protections are not infringed should we exempt threatening calls from the privacy requirements of section 64.1601(b)? We note, for example, that the Consumer and Governmental Affairs Bureau (CGB) in granting waivers of our rule, has imposed certain conditions and obligations on entities granted waivers of section 64.1601(b) in the past to ensure that restricted CPN information is disclosed only to authorized personnel for purposes of investigating threatening calls, and hence, any legitimate expectation of privacy by non-threatening callers is adequately protected.⁴¹ We seek comment on whether similar conditions should be imposed on any party that obtains restricted CPN pursuant to the proposed exemption. We seek comment on these and any other proposals to achieve our objective in assisting threatened parties and law enforcement officials in identifying threatening callers in a timely manner.

17. We seek comment on whether circumstances have changed since the Commission originally adopted section 64.1601. At the time, the Commission rejected arguments that parts of the rule would infringe on callers’ expectations of privacy and anonymity.⁴² This was in part because the rule would

³⁸ *Caller ID Order*, 9 FCC Rcd at 1769, para. 35; *see also Caller ID Reconsideration Order*, 10 FCC Rcd at 11706, para. 13 (“The Commission [in the *Caller ID Order*] recognized that passage of CPN could invade the privacy of calling parties wishing to remain anonymous”).

³⁹ *Caller ID Reconsideration Order*, 10 FCC Rcd at 11728-29, paras. 81-83.

⁴⁰ *See* 47 U.S.C. § 222(h)(1) (defining “customer proprietary network information” as including “information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship”); *id.* § 222(c)(1) (prohibiting a carrier from disclosing individually identifiable CPNI that it obtains by virtue of its provision of a telecommunications service without the approval of the customer, unless an exception applies).

⁴¹ These conditions typically include: (1) the CPN on incoming restricted calls not be passed on to the line called; (2) any system used to record CPN be operated in a secure way, limiting access to designated telecommunications and security personnel; (3) telecommunications and security personnel may access restricted CPN data only when investigating phone calls of a threatening and serious nature, and shall document that access as part of the investigative report; (4) transmission of restricted CPN information to law enforcement agencies must occur only through secure communications; (5) CPN information must be destroyed in a secure manner after a reasonable retention period; and (6) any violation of these conditions must be reported promptly to the Commission.

⁴² *See Caller ID Order*, 9 FCC Rcd at 1768, para. 27 (noting that “the record and case law demonstrate that there is no federal constitutional bar to the offering by carriers of CPN-based services such as Caller ID.”).

allow callers to choose to block passage of CPN by choosing either per-call or per-line blocking.⁴³ Would this logic hold true if we were to allow call recipients to demand that CPN be revealed by asserting that the call contained a threat? In concluding that compelling the transmission of CPN would not violate any privacy rights under the Fourth Amendment, the Commission reasoned that callers have no reasonable expectation of privacy in their phone numbers because those numbers are voluntarily exposed to the telephone company's equipment.⁴⁴ Does this hold true today, and would it be true if callers intending to block CPN delivery could have it unblocked by a called party's assertion that a call contained a threat?

B. The JCC Temporary Waiver

18. Based on the large numbers of recent threats phoned in to the JCCs and the record compiled in this matter, we confirm that good cause continues to exist to maintain the temporary waiver of section 64.1601(b) granted to JCCs and the carriers who serve them for disclosure of CPN associated with threatening calls to JCCs.⁴⁵ The recent phone threats documented in the Schumer Letter and in public press reports pose a danger to the "safety of life and property"⁴⁶ of a specific category of call recipients (JCCs), and the public interest is served by a waiver that will help both JCCs and local law enforcement address the threats in a timely manner while also continuing to protect the privacy of lawful callers. We note that comments filed in response to the public notice on this matter unanimously support the waiver granted to JCCs.⁴⁷ Although suspects have been apprehended in connection with threatening calls made to JCCs, it is unclear whether these individuals are responsible for all of the recent threatening calls, and there remains the ongoing risk of copycat actors.⁴⁸

19. In the event the Commission amends its rules to recognize an exemption for threatening calls as proposed herein, this waiver, along with other similar prior waivers, will be encompassed within the protections afforded by that exemption. In the meantime, this temporary waiver ensures that JCCs are afforded certainty that they will continue to have the necessary protections from threatening calls.

IV. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Act Analysis

20. As required by Section 603 of the Regulatory Flexibility Act of 1980, as amended,⁴⁹ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this *Notice*, of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA.

⁴³ *Caller ID Reconsideration Order*, 10 FCC Rcd at 11733, para. 91 (noting, for example, that "no customer in California will be compelled to disclose his or her telephone number" due to the ability to block passage of CPN by choosing either per-call or per-line blocking). The Commission also concluded that CPN delivery is not analogous to the "core political speech" that courts have held may be entitled to anonymity. *Id.* at 11732-33, paras. 89-90.

⁴⁴ *Caller ID Order*, 9 FCC Rcd at 1768, para. 27.

⁴⁵ See Schumer Letter at 1.

⁴⁶ 47 U.S.C. § 151.

⁴⁷ See, e.g., AT&T Services Comments at 2; Shira Fischer Comments; TDR Technology Comments (suggesting that the scope of the waiver be broadened to include schools and other religious institutions).

⁴⁸ See, e.g., Oren Liebermann, Michael Schwartz, Eric Levenson, JCC Bomb Threats: Teen Suspect Arrested in Israel (Mar. 23, 2017) <http://www.cnn.com/2017/03/23/middleeast/israeli-american-teen-arrested-jcc-bomb-threats/>; Eric Levenson, AnneClaire Stapleton, Fired Reporter Arrested in Threatening Some Jewish Centers, Cyber-Stalking (Mar. 4, 2017) <http://www.cnn.com/2017/03/03/us/jewish-institutions-bomb-threats-arrest/>.

⁴⁹ See 5 U.S.C. § 603.

Comments must be identified as responses to the IRFA and must be filed on or before the dates on the first page of this *Notice*. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.⁵⁰

B. Initial Paperwork Reduction Act Analysis

21. The *Notice* contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public, the Office of Management and Budget (OMB), and other federal agencies to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995 (PRA).⁵¹ If the Commission adopts any modified information collection requirements, it will be submitted to OMB for review under Section 3507(d) of the PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,⁵² we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."⁵³

C. Other Procedural Matters

1. Ex Parte Rules

22. Permit-But-Disclose. The proceeding this *Notice* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁵⁴ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

2. Filing Requirements

23. Comments and Replies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic

⁵⁰ See 5 U.S.C. § 603(a). In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.

⁵¹ Pub. L. No. 104-13.

⁵² Pub. L. No. 107-198.

⁵³ 44 U.S.C. § 3506(c)(4).

⁵⁴ 47 CFR §§ 1.1200 *et seq.*

Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

24. Accessibility Information. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

25. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, CY-A257, Washington, DC, 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

26. Additional Information. For additional information on this proceeding, contact Richard D. Smith, Richard.Smith@fcc.gov or (717) 338-2797, of the Consumer and Governmental Affairs Bureau, Consumer Policy Division.

V. ORDERING CLAUSES

27. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in Sections 1-4 and 201 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201, this Notice of Proposed Rulemaking IS ADOPTED.

28. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A
Draft Proposed Rules for Public Comment

For the reasons set forth above, Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

SUBPART P – Calling Party Telephone Number; Privacy

1. Amend section 64.1600 by adding new paragraph (l) to read as follows:

§ 64.1600 Definitions.

* * * * *

(l) *Threatening Call*. The term “threatening call” means any call that includes a threat of serious and imminent unlawful action posing a substantial risk to property, life, safety, or health.

2. Amend section 64.1601(d)(4) by removing “or” at the end of subsection (ii), by adding “or” at the end of subsection (iii), and by adding new subsection (iv) to read as follows:

§ 64.1601 Delivery requirements and privacy restrictions.

* * * * *

(iv) Is made in connection with a threatening call. Upon report of such a threatening call, the carrier will provide any CPN of the calling party to the called party and/or law enforcement for the purpose of identifying the responsible party.

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rule Making (Notice or NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of this Notice. The Commission will send a copy of this Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. In recent years, media and law enforcement reports indicate that the number of threatening calls appears to be increasing dramatically.⁴ In the past the Commission has addressed such situations on a case-by-case basis via a waiver process at the request of individual entities that report receiving threatening calls.⁵ With the NPRM, we take steps to amend the Caller ID rules to ensure that law enforcement and threatened parties are not hindered in their ability to investigate and respond to threatening phone calls. We recognize the privacy interests of non-threatening callers that may have valid reasons to block their telephone numbers by limiting our proposal strictly to those situations that involve threatening calls of a serious and imminent nature while further limiting access to such restricted Calling Party Number (CPN)⁶ information in the case of threatening calls only to those parties responsible for safety and security of the threatened party. We propose to amend the current process that necessitates addressing individual waiver requests on a case-by-case basis. We propose and seek additional comment on ways to facilitate the ability of law enforcement and security personnel to investigate and identify callers while protecting the legitimate privacy interests of non-threatening callers.

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ See, e.g., *supra* n.2.

⁵ See, e.g., *Rules and Policies Regarding Calling Number Identification Service – Caller ID; Petition of National Aeronautics and Space Administration for Waiver of Federal Communications Commission Regulations at 47 CFR § 64.1601(b)*, CC Docket No. 91-281, Order, 27 FCC Rcd 5704 (CGB 2012) (*NASA Order*); *Rules and Policies Regarding Calling Number Identification Service – Caller ID, Petition of Enlarged City School District of Middletown for Waiver of Federal Communications Commission Regulations at 47 CFR 64.1601(b)*, CC Docket No. 91-281, Order, 31 FCC Rcd 3565 (CGB 2016) (*Middletown Waiver*).

⁶ The Commission's rules define CPN as "the subscriber line number or the directory number contained in the calling party number parameter of the call set-up message associated with an interstate call on a Signaling System 7 network." 47 CFR § 64.1600(e). Associated with the CPN is a Privacy Indicator "that indicates whether the calling party authorizes presentation of the calling party number to the called party." *Id.* § 64.1600(j).

3. Specifically, we propose to amend section 64.1601(d)(4)'s current list of exemptions by adding a new section (iv) to read: (4) CPN delivery- "(iv) Is made in connection with a threatening call. Upon report of such a threatening call, the carrier will provide any CPN of the calling party to the called party and/or law enforcement for the purpose of identifying the responsible party."⁷ We propose defining a "threatening call" as any called that includes a threat of serious and imminent unlawful action posing a substantial risk to property, life, safety, or health.⁸ In addition, we seek comment on how to facilitate the provision of CPN to threatened entities in a manner that minimizes administrative burdens on carriers while ensuring that such information is provided to the threatened party and law enforcement in a timely manner.⁹

4. For privacy purposes, we seek comment on whether we should require anyone reporting a threatening call for purpose of obtaining otherwise restricted CPN to do so in conjunction with a law enforcement agency to provide some assurance that the called party is not attempting to circumvent the privacy obligations of the rule by reporting a false threat.¹⁰ We also inquire into the possibility of excluding private individuals, who are not typically the target of mass phone threats, from this exemption in order to limit the potential for abuse.¹¹ We note, for example, that CGB has imposed certain conditions and obligations on entities granted waivers of section 64.1601(b) in the past to ensure that restricted CPN information is disclosed only to authorized personnel for purposes of investigating threatening calls, and hence, any legitimate expectation of privacy by non-threatening callers is adequately protected.¹² We seek comment on whether similar conditions should be imposed on any party that obtains restricted CPN pursuant to the proposed exemption.¹³

B. Legal Basis

5. The proposed and anticipated rules are authorized under Sections 1-4 and 201 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, and 201.

⁷ *Notice of Proposed Rulemaking*, para. 12.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at para. 13.

¹¹ *Id.*

¹² *Id.* These conditions typically include: (1) the CPN on incoming restricted calls not be passed on to the line called; (2) any system used to record CPN be operated in a secure way, limiting access to designated telecommunications and security personnel; (3) telecommunications and security personnel may access restricted CPN data only when investigating phone calls of a threatening and serious nature, and shall document that access as part of the investigative report; (4) transmission of restricted CPN information to law enforcement agencies must occur only through secure communications; (5) CPN information must be destroyed in a secure manner after a reasonable retention period; and (6) any violation of these conditions must be reported promptly to the Commission.

¹³ *Notice of Proposed Rulemaking*.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

6. The RFA directs agencies to provide a descriptions of, and where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted.¹⁴ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁵ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁶ Under the Small Business Act, a “small business concern” is one that: 1) is independently owned and operated; 2) is not dominant in its field of operation; and 3) meets any additional criteria established by the Small Business Administration (SBA).¹⁷ Nationwide, there are a total of approximately 28.8 million small businesses, according to the SBA.¹⁸

1. Wireline Carriers

7. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”¹⁹ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.²⁰ Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.²¹ Thus, under this size standard, the majority of firms in this industry can be considered small.

¹⁴ 5 U.S.C. § 603(b)(3).

¹⁵ 5 U.S.C. § 601(6).

¹⁶ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

¹⁷ 15 U.S.C. § 632.

¹⁸ SBA, Office of Advocacy, *Frequently Asked Questions*, https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (last visited Aug. 31, 2016).

¹⁹ U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Categories”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

²⁰ See 13 CFR § 120.201, NAICS Code 517110.

²¹ 2012 U.S. Economic Census, NAICS Code 517110, at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

8. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for local exchange services. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”²² Under that size standard, such a business is small if it has 1,500 or fewer employees.²³ Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.²⁴ Consequently, the Commission estimates that most providers of local exchange service are small businesses.

9. *Incumbent Local Exchange Carriers (Incumbent LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”²⁵ Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁶ Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.²⁷ Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses.

10. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission

²² U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Categories”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

²³ 13 CFR § 121.201, NAICS code 517110.

²⁴ 2012 U.S. Economic Census, NAICS Code 517110, at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

²⁵ U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Categories”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

²⁶ 13 CFR § 121.201, NAICS code 517110.

²⁷ 2012 U.S. Economic Census, NAICS Code 517110, at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”²⁸ Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁹ Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.³⁰ Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and other local service providers are small entities.

11. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”³¹ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.³² We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

12. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution

²⁸ U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Categories”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

²⁹ 13 CFR § 121.201, NAICS code 517110.

³⁰ 2012 U.S. Economic Census, NAICS Code 517110, at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

³¹ 5 U.S.C. § 601(3).

³² Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, Federal Communications Commission (May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

services using facilities and infrastructure that they operate are included in this industry.”³³ Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁴ Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.³⁵ Consequently, the Commission estimates that the majority of IXC are small entities.

13. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”³⁶ Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁷ Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.³⁸ Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small.

2. Wireless Carriers

14. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.³⁹ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.⁴⁰

³³ U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Categories”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³⁴ 13 CFR § 121.201, NAICS code 517110.

³⁵ 2012 U.S. Economic Census, NAICS Code 517110, at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

³⁶ U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Categories”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³⁷ 13 CFR § 121.201, NAICS code 517110.

³⁸ 2012 U.S. Economic Census, NAICS Code 517110, at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

³⁹ U.S. Census Bureau, 2012 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2012%20NAICS%20Search>.

⁴⁰ 13 CFR § 121.201, NAICS code 517210 (2012 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees.⁴¹ Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.⁴² Of this total, an estimated 261 have 1,500 or fewer employees.⁴³ Thus, using available data, we estimate that the majority of wireless firms can be considered small.

15. *Satellite Telecommunications Providers.* The category of Satellite Telecommunications “comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”⁴⁴ This category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules.⁴⁵ For this category, Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year.⁴⁶ Of this total, 299 firms had annual receipts of under \$25 million.⁴⁷ Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities.

16. *All Other Telecommunications.* All Other Telecommunications comprises, *inter alia*, “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”⁴⁸ For this category, Census Bureau data for 2012 show that there were a total of 1,442 firms that operated for the entire year.⁴⁹ Of this total, 1,400 had annual receipts below \$25

⁴¹ 2012 U.S. Economic Census, NAICS Code 517210, at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁴² *Trends in Telephone Service*, tbl. 5.3.

⁴³ *Id.*

⁴⁴ U.S. Census Bureau, 2012 NAICS Definitions, “517410 Satellite Telecommunications,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517410&search=2012>.

⁴⁵ 13 CFR § 121.201, NAICS Code 517410.

⁴⁶ U.S. Census Bureau, 2012 Economic Census, Subject Series: Information, “Establishment and Firm Size,” NAICS code 517410.

⁴⁷ *Id.*

⁴⁸ U.S. Census Bureau, 2012 NAICS Definitions, “517919 All Other Telecommunications,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2012>.

⁴⁹ U.S. Census Bureau, 2012 Economic Census, Subject Series: Information, “Establishment and Firm Size,” NAICS code 517919.

million per year.⁵⁰ Consequently, we estimate that the majority of All Other Telecommunications firms are small entities.

3. Resellers

17. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.⁵¹ The SBA has developed a small business size standard for the category of Telecommunications Resellers.⁵² Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵³ Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.⁵⁴ Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.⁵⁵ Of this total, an estimated 857 have 1,500 or fewer employees.⁵⁶ Consequently, the Commission estimates that the majority of toll resellers are small entities.

18. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.⁵⁷ Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵⁸ Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all

⁵⁰ *Id.*

⁵¹ <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012>.

⁵² 13 CFR § 121.201, NAICS code 517911.

⁵³ 2012 U.S. Economic Census, NAICS Code 517911, at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁵⁴ 2012 U.S. Economic Census, NAICS Code 517911, at https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

⁵⁵ *Trends in Telephone Service*, at tbl. 5.3.

⁵⁶ *Id.*

⁵⁷ <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012>.

⁵⁸ 13 CFR § 121.201, NAICS code 517911.

operated with fewer than 1,000 employees.⁵⁹ Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities.

19. *Prepaid Calling Card Providers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.⁶⁰ Under that size standard, such a business is small if it has 1,500 or fewer employees.⁶¹ Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees.⁶² Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

20. As indicated above, the NPRM seeks comment on a proposed amendment to the rules to require carriers to make available, upon report of a threatening call from the called party, any CPN of the calling party to the called party and/or law enforcement for the purpose of identifying the responsible party. Until these requirements are defined in full, it is not possible to predict with certainty whether the costs of compliance will be proportionate between small and large providers. We seek to minimize the burden associated with reporting, recordkeeping, and other compliance requirements for the proposed rules, such as modifying software, developing procedures, and training staff.

21. Under the proposed rules, carriers will need to make the CPN of a calling party available to a threatened recipient of the call. They may need to work with law enforcement and the entity called to ensure there is a genuine threat in order to protect the privacy of the caller.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

22. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small

⁵⁹ U.S. Census Bureau, 2012 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 517911.

⁶⁰ <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012>.

⁶¹ 13 CFR § 121.201, NAICS code 517911.

⁶² U.S. Census Bureau, 2012 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 517911.

entities.⁶³

23. The Commission has proposed rules for carriers, upon report of a threatening call from the called party, to provide any CPN of the calling party to the called party and/or law enforcement for the purpose of identifying the responsible party. We have requested feedback from small businesses in the NPRM, and seek comment on ways to make the proposed rules less costly. We ask how to facilitate the provision of CPN to threatened entities in a manner that minimizes the administrative burdens on carriers while ensuring that such information is provided to the threatened party and law enforcement in a timely manner. We seek the input of carriers on how to best facilitate the process of providing CPN information in a timely manner to parties that report a threatening call. To help carriers protect privacy interests, we seek comment on whether we should require anyone reporting a threatening call for purposes of obtaining otherwise restricted CPN to do so in conjunction with a law enforcement agency to provide some assurance that the called party is not attempting to circumvent the privacy obligations of the rule by reporting a false threat. We also ask whether excluding private individuals would limit the potential for abuse. We seek comment on how to minimize the economic impact of our proposals, particularly to small businesses.

24. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM and this IRFA, in reaching its final conclusions and taking action in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule

25. None.

⁶³ 5 U.S.C. § 603(c).

APPENDIX C
List of Commenters

The following parties have filed comments in response to the Public Notice issued in this matter on March 3, 2017 (CG Docket No. 91-281):

Commenter

AT&T Services, Inc.

Shira Fischer

TDR Technology Solutions

Rachel

Eric Scott

Abbreviation

AT&T Services

Shira Fischer

TDR Technology

Rachel

Eric Scott