



Small Entity Compliance Guide

August 5, 2004

FCC 02-214

Telecommunications Carrier's Use of Customer Proprietary Network Information and Other Customer Information

This Guide is prepared in accordance with the requirements of Section 212 of The Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the above-referenced FCC rule. This Guide is not intended to replace the rule, and final authority rests solely with the rule. While we have attempted to cover all parts of the rule that might be especially important to small entities, the coverage may not be exhaustive. In any civil or administrative action against a small entity for a violation of a rule, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. This Guide may not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be made based on the statute and regulations. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update text. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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Compliance Requirements

1. General Responsibility (47 U.S.C. § 222(a))

Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.

2. Important Definitions

a. Affiliate. The term “affiliate” has the same meaning given such term in section 3(1) of the Communications Act of 1934, as amended, **47 U.S.C. § 153(1)**.

- i.** The term “affiliate” means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.
- ii.** For purposes of this paragraph, the term “own” means to own an equity interest (or the equivalent thereof) of more than 10 percent.

b. Communications-related Services (47 C.F.R. § 64.2003(b))

The term “communications-related services” means telecommunications services, information services typically provided by telecommunications carriers, and services related to the provision or maintenance of customer premises equipment.

c. Customer (47 C.F.R. § 64.2003(c))

A customer of a telecommunications carrier is a person or entity to which the telecommunications carrier is currently providing service.

d. Customer Proprietary Network Information (47 U.S.C. § 222(h)(1))

Customer Proprietary Network Information (CPNI) is defined as:

- i.** 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; and
- ii.** Information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier.

iii. **Except** that such term does not include subscriber list information.

e. Customer premises equipment (CPE)

- i. The term “customer premises equipment (CPE)” has the same meaning given to such term in section 3(14) of the Communications Act of 1934, as amended, **47 U.S.C. § 153(14)**.
- ii. The term “customer premises equipment” means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

f. Information services typically provided by telecommunications carriers

- i. The phrase “information services typically provided by telecommunications carriers” means only those information services (as defined in section 3(20) of the Communications Act of 1934, as amended, **47 U.S.C. § 153(2)**) that are typically provided by telecommunications carriers, such as Internet access or voice mail services.
- ii. The term “information service” means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service (**47 U.S.C. § 153(2)**).
- iii. **Except that** such phrase “information services typically provided by telecommunications carriers,” as used in this subpart, shall not include retail consumer services provided using Internet websites (such as travel reservation services or mortgage lending services), whether or not such services may otherwise be considered to be information services (**47 C.F.R. § 64.2003(f)**).

g. Local exchange carrier (LEC)

The term “local exchange carrier (LEC)” has the same meaning given to such term in section 3(26) of the Communications Act of 1934, as amended, **47 U.S.C. § 153(26)**.

- i. The term “local exchange carrier” means any person that is engaged in the provision of telephone exchange service or exchange access.

- ii. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under **47 U.S.C. § 332(c)**, except to the extent that the Commission finds that such service should be included in the definition of such term.

h. Opt-in approval

The term “opt-in approval” refers to a method for obtaining customer consent to use, disclose, or permit access to the customer’s CPNI. This approval method requires that the carrier obtain from the customer affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided appropriate notification of the carrier’s request consistent with the requirements set forth in this subpart (**47 C.F.R. § 64.2003(h)**).

i. Opt-out approval

The term “opt-out approval” refers to a method for obtaining customer consent to use, disclose, or permit access to the customer’s CPNI. Under this approval method, a customer is deemed to have consented to the use, disclosure, or access to the customer’s CPNI if the customer has failed to object thereto within the waiting period described in section 64.2009(d)(1) of this subpart, after the customer is provided appropriate notification of the carrier’s request for consent consistent with the rules in this subpart (**47 C.F.R. § 64.2003(i)**).

j. Subscriber list information (SLI)

- i. The term “subscriber list information (SLI)” has the same meaning given to such term in section 222(h)(3) of the Communications Act of 1934, as amended, **47 U.S.C. § 222(h)(3)**.
- ii. The term “subscriber list information” means any information—
 1. Identifying the listed names of subscribers of a carrier and such subscribers’ telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and
 2. That the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

k. Telecommunications carrier or carrier

The terms “telecommunications carrier” or “carrier” shall have the same meaning as set forth in section 3(44) of the Communications Act of 1934, as amended, **47 U.S.C. § 153(44)**.

- i. The term “telecommunications carrier” means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226 of this title).
- ii. A telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

1. Telecommunications service

- i. The term “telecommunications service” has the same meaning given to such term in section 3(46) of the Communications Act of 1934, as amended, **47 C.F.R. § 153(46)**.
- ii. The term “telecommunications service” means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

3. Use of Customer Proprietary Network Information (CPNI) (47 U.S.C. § 222(c)(1))

a. Restrictions (47 U.S.C. § 222(c)(1))

Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of:

- i. The telecommunications service from which such information is derived; or
- ii. Services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.

b. Exceptions (47 U.S.C. § 222(d))

CPNI may be used by a telecommunications carrier, either directly or through its agents, to:

- i. Initiate, render, bill and collect for telecommunications services; or

- ii. Protect the rights or property of the carrier, or to protect users and other carriers from fraudulent or illegal use of, or subscription to, such services; or
- iii. Provide inbound marketing, referral or administrative services to the customer for the duration of the call, if the call was initiated by the customer and the customer approves of the carrier's use to provide such service; or
- iv. Provide call location information concerning the user of a commercial mobile service in certain specified emergency situations.
- v. Carriers and their affiliates may also use their customer's CPNI without notice or approval to market services within the package of services to which the customer already subscribes.

4. Guidelines for Use of Customer Proprietary Network Information (47 C.F.R. § 64.2005)

- a. Any telecommunications carrier **may** use, disclose, or permit access to CPNI for the purpose of providing or marketing service offerings among the categories of service (i.e., local, interexchange, and CMRS) to which the customer already subscribes from the same carrier, without customer approval (**47 C.F.R. § 64.2005(a)**).
 - i. If a telecommunications carrier provides different categories of service, and a customer subscribes to more than one category of service offered by the carrier, the carrier **is permitted** to share CPNI among the carrier's affiliated entities that provide a service offering to the customer.
 - ii. **Except that** if a telecommunications carrier provides different categories of service, but a customer does not subscribe to more than one offering by the carrier, the carrier **is not permitted** to share CPNI with its affiliates, except as provided in **47 C.F.R. § 64.2007(b)**.
- b. A telecommunications carrier **may not** use, disclose, or permit access to CPNI to market to a customer service offerings that are within a category of service to which the subscriber does not already subscribe from that carrier, unless that carrier has customer approval to do so, except as described in **47 C.F.R. § 64.2005(c)**.
 - i. **Except that** a wireless provider **may** use, disclose, or permit access to CPNI derived from its provision of CMRS, without customer approval, for the provision of CPE and information service(s). A wireline carrier **may** use, disclose or permit access to CPNI derived from its provision of

in effect until the customer revokes or limits such approval or disapproval.

- iii. A telecommunications carrier must maintain records of approval, whether oral, written or electronic, for at least one year.

b. Use of Opt-Out and Opt-In Approval Processes (47 C.F.R. § 64.2007(b))

- i. A telecommunications carrier **may**, subject to opt-out approval or opt-in approval, use its customer's individually identifiable CPNI for the purpose of marketing communications-related services to that customer.
- ii. A telecommunications carrier **may**, subject to opt-out approval or opt-in approval, disclose its customer's individually identifiable CPNI, for the purpose of marketing communications-related services to that customer, to its agents, to its affiliates that provide communications-related services, and to its joint venture partners and independent contractors.
- iii. A telecommunications carrier **may** also permit such persons or entities to obtain access to such CPNI for such purposes. Any such disclosure to or access provided to joint venture partners and independent contractors shall be subject to the safeguards set forth in **(47 C.F.R. § 64.2007(b)(2))**.

iv. Joint Venture/Contractor Safeguards (47 C.F.R. § 64.2007(b)(2))

A telecommunications carrier that discloses or provides access to CPNI to its joint venture partners or independent contractors shall enter into confidentiality agreements with independent contractors or joint venture partners that comply with the following requirements.

- 1. The confidentiality agreement shall:
 - a. Require that the independent contractor or joint venture partner use the CPNI only for the purpose of marketing or providing the communications-related services for which that CPNI has been provided;
 - b. Disallow the independent contractor or joint venture partner from using, allowing access to, or disclosing the CPNI to any other party, unless required to make such disclosure under force of law; and
 - c. Require that the independent contractor or joint venture partner have appropriate protections in place to ensure the ongoing confidentiality of consumers' CPNI.

- v. **Except** for use and disclosure of CPNI that is permitted without customer approval under **47 C.F.R. § 64.2005**, or that is described in **47 C.F.R. § 64.2007(b)(1)**, or as otherwise provided in section 222 of the Communications Act of 1934, as amended, a telecommunications carrier may only use, disclose, or permit access to its customer's individually identifiable CPNI subject to opt-in approval.

6. Notice Required for Use of Customer Proprietary Network Information (47 C.F.R. § 64.2008)

a. Notification, Generally (47 C.F.R. § 64.2008(a))

- i. Prior to any solicitation for customer approval, a telecommunications carrier must provide notification to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI.
- ii. A telecommunications carrier must maintain records of notification, whether oral, written or electronic, for at least one year.

- b. Individual notice to customers must be provided when soliciting approval to use, disclose, or permit access to customers' CPNI.

c. Content of Notice (47 C.F.R. § 64.2008(c))

Customer notification must provide sufficient information to enable the customer to make an informed decision as to whether to permit a carrier to use, disclose, or permit access to, the customer's CPNI.

- i. The notification must state that the customer has a right, and the carrier has a duty, under federal law, to protect the confidentiality of CPNI.
- ii. The notification must specify the types of information that constitute CPNI and the specific entities that will receive the CPNI, describe the purposes for which CPNI will be used, and inform the customer of his or her right to disapprove those uses, and deny or withdraw access to CPNI at any time.
- iii. The notification must advise the customer of the precise steps the customer must take in order to grant or deny access to CPNI, and must clearly state that a denial of approval will not affect the provision of any services to which the customer subscribes. However, carriers may provide a brief statement, in clear and neutral language, describing consequences directly resulting from the lack of access to CPNI.
- iv. The notification must be comprehensible and must not be misleading.

- v. If written notification is provided, the notice must be clearly legible, use sufficiently large type, and be placed in an area so as to be readily apparent to a customer.
- vi. If any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.
- vii. A carrier may state in the notification that the customer's approval to use CPNI may enhance the carrier's ability to offer products and services tailored to the customer's needs. A carrier also may state in the notification that it may be compelled to disclose CPNI to any person upon affirmative written request by the customer.
- viii. A carrier may not include in the notification any statement attempting to encourage a customer to freeze third-party access to CPNI.
- ix. The notification must state that any approval, or denial of approval for the use of CPNI outside of the service to which the customer already subscribes from that carrier is valid until the customer affirmatively revokes or limits such approval or denial.
- x. A telecommunications carrier's solicitation for approval must be proximate to the notification of a customer's CPNI rights.

d. Notice Requirements Specific to Opt-Out (47 C.F.R. § 64.2008(d))

A telecommunications carrier must provide notification to obtain opt-out approval through electronic or written methods, but not by oral communication (except as provided in **47 C.F.R. § 64.2008(f)**). The contents of any such notification must comply with the requirements of **47 C.F.R. § 64.2008(c)**.

- i. Carriers must wait a 30-day minimum period of time after giving customers notice and an opportunity to opt-out before assuming customer approval to use, disclose, or permit access to CPNI. A carrier may, in its discretion, provide for a longer period. Carriers must notify customers as to the applicable waiting period for a response before approval is assumed.
 - 1. In the case of an electronic form of notification, the waiting period shall begin to run from the date on which the notification was sent.
 - 2. In the case of notification by mail, the waiting period shall begin to run on the third day following the date that the notification was mailed.

- ii. Carriers using the opt-out mechanism must provide notices to their customers every two years.
- iii. Telecommunications carriers that use e-mail to provide opt-out notices must comply with the following requirements in addition to the requirements generally applicable to notification:
 - 1. Carriers must obtain express, verifiable, prior approval from consumers to send notices via e-mail regarding their service in general, or CPNI in particular;
 - 2. Carriers must allow customers to reply directly to e-mails containing CPNI notices in order to opt-out;
 - 3. Opt-out e-mail notices that are returned to the carrier as undeliverable must be sent to the customer in another form before carriers may consider the customer to have received notice; and
 - 4. Carriers that use e-mail to send CPNI notices must ensure that the subject line of the message clearly and accurately identifies the subject matter of the e-mail.
 - 5. Telecommunications carriers must make available to every customer a method to opt-out that is of no additional cost to the customer and that is available 24 hours a day, seven days a week. Carriers may satisfy this requirement through a combination of methods, so long as all customers have the ability to opt-out at no cost and are able to effectuate that choice whenever they choose.

e. Notice Requirements Specific to Opt-In (47 C.F.R. § 64.2008(e))

A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods. The contents of any such notification must comply with the requirements of 47 C.F.R. § 64.2008(c).

f. Notice Requirements Specific to One-Time Use of CPNI (47 C.F.R. § 64.2008(f))

- i. Carriers may use oral notice to obtain limited, one-time use of CPNI for inbound and outbound customer telephone contacts for the duration of the call, regardless of whether carriers use opt-out or opt-in approval based on the nature of the contact.
- ii. The contents of any such notification must comply with the requirements of subsection (c) of this section, except that telecommunications carriers may omit any of the following notice

provisions if not relevant to the limited use for which the carrier seeks CPNI:

1. Carriers need not advise customers that if they have opted-out previously, no action is needed to maintain the opt-out election.
2. Carriers need not advise customers that they may share CPNI with their affiliates or third parties and need not name those entities, if the limited CPNI usage will not result in use by, or disclosure to, an affiliate or third party.
3. Carriers need not disclose the means by which a customer can deny or withdraw future access to CPNI, so long as carriers explain to customers that the scope of the approval the carrier seeks is limited to one-time use.
4. Carriers may omit disclosure of the precise steps a customer must take in order to grant or deny access to CPNI, as long as the carrier clearly communicates that the customer can deny access to his CPNI for the call.

7. Safeguards Required for Use of Customer Proprietary Network Information (47 C.F.R. § 64.2009)

- a. Telecommunications carriers must implement a system by which the status of a customer's CPNI approval can be clearly established prior to the use of CPNI.
- b. Telecommunications carriers must train their personnel as to when they are, and are not, authorized to use CPNI, and carriers must have an express disciplinary process in place.
- c. All carriers shall maintain a record, electronically or in some other manner, of their own and their affiliates' sales and marketing campaigns that use their customers' CPNI. All carriers shall maintain a record of all instances where CPNI was disclosed or provided to third parties, or where third parties were allowed access to CPNI. The record must include a description of each campaign, the specific CPNI that was used in the campaign, and what products and services were offered as a part of the campaign. Carriers shall retain the record for a minimum of one year.
- d. Telecommunications carriers must establish a supervisory review process regarding carrier compliance with the rules in this subpart for outbound marketing situations and maintain records of carrier compliance for a minimum period of one year. Specifically, sales personnel must obtain

supervisory approval of any proposed outbound marketing request for customer approval.

- e.** A telecommunications carrier must have a corporate officer, as an agent of the carrier, sign a compliance certificate on an annual basis stating that the officer has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the rules in this subpart. The carrier must provide a statement accompanying the certificate explaining how its operating procedures ensure that it is, or is not, in compliance with the rules in this subpart.
- f.** Carriers must provide written notice within five business days to the Commission of any instance where the opt-out mechanisms do not work properly, to such a degree that consumers' inability to opt-out is more than an anomaly.

 - i.** The notice shall be in the form of a letter, and shall include the carrier's name, a description of the opt-out mechanism(s) used, the problem(s) experienced, the remedy proposed and when it will be/was implemented, whether the relevant state commission(s) has been notified and whether it has taken any action, a copy of the notice provided to customers, and contact information.
 - ii.** Such notice must be submitted even if the carrier offers other methods by which consumers may opt-out.