

high-power commercial lamp that is suitable for lighting coverage of large, commercial areas, such as warehouses, parking lots and shopping malls. Fusion's efforts were supported by the Department of Energy (DOE), the Environmental Protection Agency (EPA) and the National Air and Space Administration (NASA). Fusion states that its sulfur based lamp is over four times more efficient than incandescent lighting, yet does not have the color drawbacks of present mercury based high intensity discharge lamps used in typical outside lighting and commercial environments. The lamp produces a spectra closely matching that of the sun, but with very little heat or ultraviolet rays. In testing demonstrations, two Fusion lamps, shining light from both ends into a reflective light tube 240 feet long, were able to replace the light of 240 and 175 watt mercury lamps at the DOE headquarters. At the National Air and Space Museum, three Fusion lamps shining into three separate 90-foot tubes replaced 94 conventional lights.

14. Fusion states that the cost of complying with the current line-conducted limits for RF lighting devices is excessive. The Fusion lamp must use a line filter to come into compliance with the line-conducted limits for commercial RF lighting devices. Fusion argues that although existing line filters will permit Fusion's lamp to pass the current FCC limits, they are not designed for the operating temperatures of the lamp and therefore fail to meet Underwriter Laboratories (UL) safety requirements. Additionally, Fusion solicited data from power supply manufacturers and notes that a custom line filter needed to make their product meet both the FCC and UL requirements would add approximately 15 percent to the final cost.

15. At this time, we are proposing no additional, alternative RF rule modifications beyond those generally described by GE and Fusion. We seek comment on any additional alternatives.

Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule

16. None.

List of Subjects in 47 CFR Part 18

Business and industry.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 64

[CC Docket No. 96-115, FCC 98-27]

Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing this Notice of Proposed Rulemaking (NPRM) seeking comment on three issues involving carrier duties and obligations relating to the use of Customer Proprietary Network Information (CPNI) and other customer information established under sections 222(a) and (b) of the Telecommunications Act of 1996. We are doing this based on various responses from parties in the proceeding.

DATES: Comments are due on or before March 30, 1998 and Reply Comments are due on or before April 14, 1998.¹ Written comments by the public on the proposed information collections are due March 30, 1998. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before July 6, 1998.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th St., N.W., Washington, D.C. 20036. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain_t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Lisa Choi, Attorney, Common Carrier

¹ Editorial Note: This document was received at the Office of the Federal Register on April 17, 1998.

Bureau, Policy and Program Planning Division, (202) 418-1580. For additional information concerning the information collections contained in this NPRM contact Judy Boley at (202) 418-0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) adopted February 19, 1998 and released February 26, 1998 (FCC 98-27). This FNPRM contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the OMB for review under the PRA. The OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding. The full text of this Further Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., N.W., Room 239, Washington, D.C. The complete text also may be obtained through the World Wide Web, at <http://www.fcc.gov/Bureaus/CommonCarrier/Orders/fcc9827.wp>, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th St., N.W., Washington, D.C. 20036.

Paperwork Reduction Act

This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due 70 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060-0715.
Title: Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of

Customer Proprietary Network Information and Other Customer Information.

Form No.: N/A.

Type of Review: Proposed Collections.

Respondents: Businesses or other for profit.

Title	Number of responses	Estimated time per response	Total annual burden (hours)
Proposed Foreign Storage of CPNI	10	78.5 hours	785
Proposed Foreign Maintenance of CPNI of all U.S.-Based Customers' Records	4,832	30 minutes	2,416

Synopsis of Further Notice of Proposed Rulemaking

I. Further Notice of Proposed Rulemaking

1. *Implementation of sections 222(a) and (b).* The Commission in the Notice of Proposed Rulemaking (NPRM) focused on issues relating to the implementation of sections 222(c)–(f). Based on various responses from parties, we now seek further comment on three general issues that principally involve carrier duties and obligations established under sections 222(a) and (b) of the Act. Specifically, section 222(a) requires telecommunications carriers “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.” Section 222(b) provides that “a telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.”

A. Customer Right to Restrict Carrier Use of CPNI for Marketing Purposes

2. Section 222(c)(1) prohibits carriers from using, disclosing, or permitting access to CPNI without customer approval for purposes other than those expressly provided in sections 222(c)(1) (A) and (B), and those in connection with the exceptions established in sections 222(d)(1)–(3). Section 222, however, is silent on whether a customer has the right to restrict a telecommunications carrier from using, disclosing, or permitting access to CPNI within the circumstances defined by subsections 222(c)(1) (A) and (B). While the *Notice* referred to customers’ “rights to restrict access to their CPNI,” it did so in the context of when carriers must seek approval for CPNI use for purposes outside the scope of the exceptions in sections 222(c)(1)(A) and (B).

3. One view is that customers should be able to restrict carrier use of CPNI for all marketing purposes, even within the customer’s total service offering. This position may be supported by the privacy protection in section 222(a), which imposes on every telecommunications carrier “a duty to protect the confidentiality of proprietary information of, and relating to * * * customers * * *,” as well as by the principle of customer control implicitly embodied in section 222(c). In addition, interpreting section 222 to permit customers to restrict all marketing use of CPNI could be viewed as furthering the privacy-competition balance struck in section 222, insofar as such a right would allow customers to prevent carrier marketing practices that they found objectionable as their service relationship with the carrier grew. Under this view, the only limitations on the customer’s right to restrict uses of CPNI within sections 222(c)(1)(A) and (B) arguably would be those “required by law” in accordance with section 222(c)(1), as well as those set forth in section 222(d). We seek comment on this issue of whether customers have a right to restrict all marketing uses of CPNI. Parties supporting a particular interpretation should state the statutory as well as policy basis for their conclusion and should demonstrate why other conclusions are not justified.

B. Protections for Carrier Information and Enforcement Mechanisms

4. We seek comment on what, if any, safeguards are needed to protect the confidentiality of carrier information, including that of resellers and information service providers, that are in addition to those adopted in this accompanying order. We note that Congress expressly protected carrier information in section 222(a), as well as in the specific limitations on the use of that information in section 222(b). We believe that Congress’ goals of promoting competition and preserving customer privacy will be furthered by protecting the competitively-sensitive information of other carriers, including resellers and information service providers, from network providers that gain access to such information through

their provision of wholesale services. Therefore, we seek comment on what, if any, additional regulations or safeguards are necessary to further this goal. These safeguards, for example, may include personnel and mechanical access restrictions. Parties identifying specific safeguards should comment explicitly on the costs and benefits of imposing such regulation.

5. We also seek comment on what, if any, further enforcement mechanisms we should adopt to ensure carrier compliance with our rules, or that may be necessary to encourage appropriate carrier discharge of their duty under section 222(a) to protect the confidentiality of customer information. We note, for example, that the Commission in other proceedings has sought to compensate carriers who have become victims of anticompetitive behavior, as well as to streamline and update the formal complaint process in order to promote the policies of the 1996 Act. Parties identifying specific enforcement mechanisms should comment explicitly on the costs and benefits of imposing such regulation.

C. Foreign Storage of, and Access to, Domestic CPNI

6. The Federal Bureau of Investigation (FBI) asks the Commission to regulate the foreign storage of, and foreign-based access to, CPNI of U.S. customers who subscribe to domestic telecommunications services (domestic CPNI). The FBI contends that vital law enforcement, public safety, national security, business, and personal privacy reasons justify a prohibition under section 222 on carriers storing domestic CPNI in foreign countries, for any purpose, including billing and collection. The FBI further maintains that permitting direct foreign access or foreign-storage of CPNI would seriously undermine important U.S. governmental, business, and privacy-based protections afforded to CPNI under other international and bilateral treaties. According to the FBI, the Commission has the authority to prohibit such foreign storage or access based upon our jurisdiction conferred in section 222. We seek comment on the FBI’s proposal. In particular, we seek

comment on whether the duty in section 222(a) upon all telecommunications carriers to protect the confidentiality of customers' CPNI, or any other provision, permits and/or requires us to prohibit the foreign storage or access to domestic CPNI.

7. As an exception to this administrative prohibition, the FBI suggests that foreign storage or access to domestic CPNI may be permitted upon informed written customer approval. When a U.S. domestic customer consents to having his or her CPNI stored or accessed from a foreign country, the FBI further proposes, however, that we require carriers to keep a copy of that customer's CPNI record within the U.S. for public safety, law enforcement, and national security reasons, so that such information is available promptly to law enforcement. We seek comment on whether requiring written customer consent to store or access CPNI from a foreign country and maintaining duplicate CPNI records in the U.S. are necessary to protect customer confidentiality under section 222(a) or any other provision.

8. Finally, the FBI also requests that we require carriers to maintain copies of the CPNI of all U.S.-based customers, regardless of whether they are U.S. domestic customers, because of the need for prompt, secure, and confidential law enforcement, public safety, or national security access to such information, pursuant to lawful authority. The FBI cites the need of such information for investigations and as trial evidence. We seek comment on this proposal.

II. Procedural Issues

B. Further Notice of Proposed Rulemaking

1. Ex Parte Presentations

9. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.

2. Initial Paperwork Reduction Act Analysis

10. This Further Notice contains a proposed information collection. As

part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Further Notice, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. Public and agency comments are due at the same time as other comments on this Further Notice; OMB comments are due July 6, 1998.

Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

3. Initial Regulatory Flexibility Act Analysis

11. As required by the Regulatory Flexibility Act (RFA), as amended, the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this *Further Notice of Proposed Rulemaking* (*Further Notice*). 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 on the *Further Notice*. The Commission will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a). In addition, the *Further Notice* and IRFA (or summaries thereof) will be published in the **Federal Register**. See *id.*

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

12. The Commission is issuing the *Further Notice* to seek comment on whether customers may restrict a carrier's use of CPNI for all marketing purposes, even within sections 222(c)(1)(A) and (B). The Commission also seeks comment on what, if any, additional further safeguards may be needed to protect the confidentiality of carrier information, including that of resellers and information service providers, and on what further enforcement mechanisms, if any, should be adopted to ensure carrier compliance with the rules adopted pursuant to the

Second Report and Order. The Commission seeks comment on whether the duty in section 222(a) upon all telecommunications carriers to protect the confidentiality of customers' CPNI, or any other provision, permits or requires the Commission to prohibit the foreign storage of, or access to domestic CPNI, as requested by the FBI based on their national security concerns.

b. Legal Basis

13. The *Further Notice* is adopted pursuant to sections 1, 4(i), 222, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 222, and 303(r).

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

14. Consistent with our conclusions in the present *Second Report and Order*, our rules apply to all telecommunications carriers; therefore, any new rules or changes in our rules adopted as a result of the *Further Notice* might impact small entities, as described in the Final Regulatory Flexibility Analysis *supra*. For a list of the small entities to which the proposed rules would apply, see the *Second Report and Order* Final Regulatory Flexibility Analysis *supra* Part X.A.1.c (Description and Estimate of the Number of Small Entities to Which the Proposed Rules will Apply). We hereby incorporate that description and estimate into this IRFA. These entities include telephone companies, wireline carriers and service providers, local exchange carriers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, wireless carriers, cellular service carriers, mobile service carriers, broadband PCS licensees, narrowband PCS licensees, SMR licensees, and resellers. We discussed *supra* the number of small businesses falling within both of the SIC categories, and attempted to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

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

15. Because we have not made any tentative conclusions or suggested proposed rules, we are unable at this time to describe any projected reporting, recordkeeping, or other compliance requirements. We have discussed generally in the *Further Notice*, *supra* Part IX, however, the possibility that such proposals, if adopted, might entail additional obligations for carriers.

e. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

16. As noted *supra*, we seek comment on whether customers may restrict a carrier's use of CPNI for all marketing purpose, and on what, if any, additional safeguards may be needed to protect the confidentiality of carrier information, as well as what further enforcement mechanisms, if any, should be adopted to ensure carrier compliance with our rules. In addition, we seek comment on whether the duty in section 222(a) upon all telecommunications carriers to protect the confidentiality of customers' CPNI, or any other provision, permits or requires the Commission to prohibit the foreign storage of, or access to domestic CPNI. Consistent with our rules in the *Second Report and Order*, our intent is to further the statutory principle that customers must have the opportunity to protect the information they view as sensitive and personal from use and disclosure by carriers. Because we have not proposed any rules, at this juncture, we are unable to forecast the economic impact on small entities.

f. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

17. None.

4. Comment Filing Procedures

18. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before March 30, 1998, and reply comments on or before April 14, 1998. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222,

Washington, D.C. 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

19. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's Rules. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

20. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements. Parties submitting diskettes should submit them to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labeled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

21. You may also file informal comments or an exact copy of your formal comments electronically via the

Internet at <<http://dettifoss.fcc.gov:8080/cgi-bin/ws.exe/beta/ecfs/upload.htm>>. For information on filing comments via the Internet, please see <ecfs@fcc.gov>. Only one copy of electronically-filed comments must be submitted. You must put the docket number of this proceeding in the body of the text if you are filing by Internet. You must note whether an electronic submission is an exact copy of formal comments on the subject line. You also must include your full name and Postal Service mailing address in your submission.

III. Ordering Clauses

22. Accordingly, *It is ordered* that pursuant to sections 1, 4(i), 222 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 222 and 303(r), a *Further Notice of Proposed Rulemaking* is hereby *Adopted*.

23. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *shall send* a copy of this *Further Notice of Proposed Rulemaking*, including the associated Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 605(b) of the Regulatory Flexibility Act, 5 U.S.C. Section 601 *et seq.* (1981).

List of Subjects

47 CFR Part 22

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

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