

**Before the  
OFFICE OF MANAGEMENT AND BUDGET  
Washington, DC**

Information Collection Being Submitted )  
for Review and Approval to the ) OMB Control No. 3060-0715  
Office of Management and Budget )

**COMMENTS OF CTIA ON THE FCC’S  
INFORMATION COLLECTION SUBMISSION**

CTIA<sup>1</sup> submits these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Paperwork Reduction Act (“PRA”) Notice<sup>2</sup> regarding extending approval for certain information collections implementing Section 222 of the Communications Act of 1934 (“the Act”), as amended.<sup>3</sup> The Office of Management and Budget (“OMB”) should disapprove the FCC’s request to extend previously approved information collections under 47 C.F.R. § 64.2009(c)-(e) as it relates specifically to the Customer Proprietary Network Information (“CPNI”) (1) events history recordkeeping and (2) annual compliance certification requirements.<sup>4</sup>

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<sup>1</sup> CTIA® ([www.ctia.org](http://www.ctia.org)) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association's members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

<sup>2</sup> Information Collection Being Submitted for Review and Approval to the Office of Management and Budget, 82 Fed. Reg. 43364 (Sept. 15, 2017) (“Notice”), <https://www.gpo.gov/fdsys/pkg/FR-2017-09-15/pdf/2017-19556.pdf>.

<sup>3</sup> 47 U.S.C. § 222.

<sup>4</sup> 47 C.F.R. § 64.2009(c), (d), and (e).

CTIA's members are strongly committed to protecting the privacy of their customers. The CPNI events history recordkeeping and annual compliance certification requirements, however, impose significant burdens without enhancing consumer privacy. In short, these requirements have no practical utility, are not necessary for the proper function of the agency, and should be disapproved under the PRA.<sup>5</sup> Thus, these comments are focused solely on these two unjustified burdens and not on the remainder of the Section 222 information collections under review.

## I. INTRODUCTION AND SUMMARY

Last year, under the Obama Administration, the Commission eliminated the CPNI events history recordkeeping and annual certification requirement because they impose undue administrative burdens and do not serve any practical purpose:

We eliminate the specific compliance recordkeeping and annual certification requirements in Section 64.2009 for voice providers. . . . We find that carriers are likely to keep records necessary to allow for any necessary enforcement without the need for specific requirements, and that notifications of data breaches to customers and to enforcement agencies . . . will ensure compliance with the rules and a workable level of transparency for customers.<sup>6</sup>

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<sup>5</sup> Paperwork Reduction Act of 1995, Pub. Law No.104-13, 109 Stat. 163 (1995), *codified at* 44 U.S.C. 3501 *et seq.*

<sup>6</sup> *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, 31 FCC Rcd 13911, 14005 ¶ 234 (2016) (“2016 Privacy Order”) CTIA notes that the 2016 Privacy Order extended the data breach notification requirement to include notice to the Commission. *Id.* at 14024 ¶ 275. Because the 2016 Privacy Order was nullified by operation of the CRA, however, the current data breach notification requirement entails notice only to customers and law enforcement agencies. *See* 47 C.F.R. § 64.2011; *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106, CC Docket No. 96-115, Order, FCC 17-82 ¶ 2 (rel. June 29, 2017) (“2017 CPNI Guidance”).

This *2016 Privacy Order*, however, was nullified by means of a joint resolution of disapproval under the Congressional Review Act,<sup>7</sup> thereby reinstating the rules as they existed before the *2016 Privacy Order*.<sup>8</sup>

Although the CPNI events history recordkeeping and annual certification requirements were reinstated by operation of the CRA, the previous Commission's conclusion that these information collections were unnecessary and burdensome remains valid. Indeed, the FCC's Supporting Statement submitted to OMB does not meaningfully dispute or contradict its previous findings that these two requirements are unnecessary and burdensome. Instead, the Commission admits that “[f]ailing to collect the information ... required by 47 CFR § 64.2009(c), (d), and (e), or collecting it less frequently, may have minimal impact.”<sup>9</sup> Despite this admission, the Commission merely avers that it is “reviewing” the PRA “implications” of these requirements.<sup>10</sup>

Meanwhile, the Commission has increased its estimates of the burdens arising from compliance with the CPNI events history recordkeeping and annual certification requirements by several orders of magnitude. Thus, the agency admits that these two requirements are far more burdensome than previously contemplated, but offers no compelling defense for why

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<sup>7</sup> Joint Resolution Providing for Congressional Disapproval under Chapter 8 of Title 5, United States Code of the Rule Submitted by the Federal Communications Commission Relating to ‘Protecting the Privacy of Customers of Broadband and Other Telecommunications Services, Pub. Law No. 115-22, 131 Stat. 88 (2017) (stating simply that “Congress disapproves the rule ... and such rule shall have no force or effect.”).

<sup>8</sup> *2017 CPNI Guidance* ¶ 2 (“Because Pub. Law 115-22 was adopted pursuant to the Congressional Review Act, 5 U.S.C. § 801(f) provides that the *2016 Privacy Order* ‘shall be treated as though [it] had never taken effect.’ As a result, the Commission rules implementing Section 222 at Part 64, Subpart U that were in effect prior to their amendment by the *2016 Privacy Order* are again in effect, including the annual compliance certification requirements and recordkeeping requirements set out in Section 64.2009(e) and (c).”).

<sup>9</sup> FCC, *Supporting Statement*, OMB Control No. 3060-0715 at 8 (filed Sept. 14, 2017) (“*2017 Supporting Statement*”), <https://www.reginfo.gov/public/do/DownloadDocument?objectID=76982800>.

<sup>10</sup> *Id.*

telecommunications providers should be required to bear these burdens – burdens that the FCC had previously found unjustified.

Because the current FCC fails to demonstrate how the burdens associated with these two requirements enhance consumer privacy or otherwise serve the public interest, OMB should decline to extend the information collection approvals for these two requirements.

## **II. THE PROPOSED COLLECTION IS NOT NECESSARY FOR THE PROPER PERFORMANCE OF THE COMMISSION’S FUNCTIONS.**

A federal agency that seeks to extend PRA authority for an existing information collection bears the burden of demonstrating to OMB that the information collection remains “necessary for the proper performance of the functions of the agency, including that the information has practical utility.”<sup>11</sup> As OMB counsels agencies:

One of OMB’s key standards under the [PRA] is whether the information has ‘practical utility’; [the agency] must demonstrate that [it] will be using *all of the information collected for a practical and necessary program purpose*.<sup>12</sup>

In short, the Commission must be able to demonstrate to OMB the continued practical utility of the CPNI events history recordkeeping and annual compliance certification requirements.

Without such a showing, these rules do not meet basic PRA standards and may be disapproved by OMB.<sup>13</sup>

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<sup>11</sup> 5 C.F.R. § 1320.8(a)(1), (d)(1)(i).

<sup>12</sup> See OMB Paperwork Reduction Act (PRA) Guide, Version 2.0, p.36 (Apr. 27, 2011) (emphasis added) (“OMB PRA Guide”) *available at* [www.opm.gov/about-us/open-government/digital-government-strategy/fitara/paperwork-reduction-act-guide.pdf](http://www.opm.gov/about-us/open-government/digital-government-strategy/fitara/paperwork-reduction-act-guide.pdf).

<sup>13</sup> See *generally* Notice of Office of Management and Budget Action, ICR 200802-3060-019 (Nov. 28, 2008) (disapproving FCC emergency backup power requirements); Notice of Office of Management and Budget Action, ICR 200804-3060-012 (July 9, 2008) (disapproving FCC cable leased access rule amendments).

The FCC, however, did not, and cannot, assure OMB that the CPNI events history recordkeeping and annual certification requirements meet these rigorous standards.<sup>14</sup> In comments to the FCC, various parties demonstrated that the CPNI events history recordkeeping and annual certification requirements have outlived their usefulness and no longer serve any practical purpose in enhancing consumer privacy. Adopted in 1998, these requirements were enacted to act as “a safeguard to ensure that carriers were complying with the customer notice, consent and choice provisions of the CPNI rules.”<sup>15</sup> As such, these safeguards “have been in effect for so long that compliance is already a well-established part of carriers’ and VoIP providers’ operating systems.”<sup>16</sup> The Commission concurred just last year, finding that the CPNI events history recordkeeping and annual certification requirements were unnecessary, as carriers were already “likely to keep records necessary to allow for any necessary enforcement without the need for specific requirements, and that notifications of data breaches to customers and to enforcement agencies (including the Commission) will ensure compliance with the rules and a workable level of transparency for customers.”<sup>17</sup>

Congress’s nullification of the *2016 Privacy Order* does not undermine the basic conclusion that the CPNI event history recordkeeping and compliance certification requirements do not serve any practical purpose. Nowhere in the legislative history or in the text of the Joint Resolution of Disapproval did Congress question or change the FCC’s factual findings with

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<sup>14</sup> See, e.g., Notice of Office of Management and Budget Action, ICR 200802-3060-019 (Nov. 28, 2008) (disapproving FCC emergency backup power requirements); Notice of Office of Management and Budget Action, ICR 200804-3060-012 (July 9, 2008) (disapproving FCC cable leased access rule amendments).

<sup>15</sup> Comments of USTelecom & VON at 3, OMB Control No. 3060-0715 (“USTelecom Comments”) (filed July 10, 2107), <https://www.reginfo.gov/public/do/DownloadDocument?objectID=76987900>.

<sup>16</sup> *Id.*

<sup>17</sup> *2016 Privacy Order* at 14005 ¶ 234.

regards to the two information collections at issue; and the *2017 Supporting Statement* does not suggest otherwise. The resuscitation of the underlying CPNI rules was a mere procedural by-product of Congress' disapproval of the FCC's overreaching *2016 Privacy Order* regulations of broadband Internet access service and voice providers under Sections 210(b) and 222 of the Act.

### **III. THE INCREASED BURDEN ESTIMATES FURTHER HIGHLIGHT THE FCC'S FAILURE TO DEMONSTRATE THE UTILITY OF THESE TWO REQUIREMENTS.**

A fundamental purpose of the PRA is to maximize the utility and public benefit of information collected by the Federal Government, while minimizing the compliance burdens on the public and other entities.<sup>18</sup> As CTIA demonstrated to the FCC, however, the compliance burdens for the CPNI event history recordkeeping and annual compliance certification requirements *are not minimal*; these requirements involve “many complex interactions among individuals in the business that are not and cannot be automated through technology.”<sup>19</sup> “Requiring carriers and interconnected VoIP providers to have the [annual] certification made at the officer level increases the burden because to get a signed certification at the officer level companies have to jump through many layers of administrative hoops.”<sup>20</sup>

In acknowledgement of these facts, the Commission has now increased its burden estimates for these two requirements by several orders of magnitude.<sup>21</sup> The FCC previously estimated the annual burden of complying with the CPNI events history recordkeeping

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<sup>18</sup> OMB PRA Guide, Executive Summary.

<sup>19</sup> Comments of CTIA at 7, OMB Control No. 3060-0715 (“CTIA Comments”) (filed July 10, 2107).

<sup>20</sup> USTelecom Comments at 21.

<sup>21</sup> The FCC's increased burden estimates is based in large measure on the comments by CTIA and USTA and VON. But, as CTIA noted, the business units affected by the CPNI requirements spend a significant amount of additional time each year to comply with these requirements that may not be fully captured in CTIA's proposed estimates. CTIA Comments at note 17. Thus, the FCC's revised burden estimates may still be too low.

requirement to be 30 minutes (0.5 hours), using personnel earning \$23.15/hour (plus 30% for overhead), for a total of \$15 per respondent, on average.<sup>22</sup> Its current estimate for the same requirement is now approximately 41 hours, using personnel earning 60.83/hour (plus 30% for overhead).<sup>23</sup> In total, the FCC now estimates CPNI events history recordkeeping compliance costs of \$3,242.24 per respondent, on average – an increase that is over 215 times the FCC’s 2014 estimate.

As for the CPNI annual certification requirement, the Commission estimated in 2014 that the annual burden of compliance was 3 hours, using personnel earning \$67.88/hour (plus 30% for overhead), for a total of \$264.73 per respondent, on average.<sup>24</sup> Its current estimate for the same requirement is approximately 41 hours, using personnel earning \$71.56/hour for half of the burden hours, and personnel earning 60.83/hour for the other half of the burden hours (plus 30% for overhead), for a total of \$3,528.4 per respondent, on average – an increase that is over 13 times the FCC’s 2014 estimate.<sup>25</sup>

By acknowledging the significant compliance burdens associated with the CPNI events history recordkeeping and annual certification requirements, the *2017 Supporting Statement* is emphasizing the need to evaluate whether those requirements are “necessary for the proper performance of the functions of the agency” or have any “practical utility” under the PRA. This is precisely what the Commission has failed to do. OMB thus has no reasonable option but to

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<sup>22</sup> See OMB Control No. 3060-0715, Supporting Statement at p. 13 (July 18, 2014) (“*2014 Supporting Statement*”), available at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201404-3060-001](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201404-3060-001).

<sup>23</sup> *2017 Supporting Statement* at 14-15.

<sup>24</sup> *2014 Supporting Statement* at 13.

<sup>25</sup> *2017 Supporting Statement* at 15.

disapprove the FCC's request to extend previously approved information collections as it relates to the CPNI events history recordkeeping and annual compliance certifications requirements.

#### **IV. CONCLUSION**

For the forgoing reasons, OMB should conclude that the CPNI events history recordkeeping and annual compliance certifications requirements do not meet the standards of the PRA. OMB should thus disapprove the FCC's request to extend previously approved information collections as to these requirements.

Respectfully submitted,

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