



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 91-281; FCC 17-132]

Calling Number Identification Service – Caller ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends its Caller Identification (Caller ID) privacy rules to allow law enforcement and security personnel, as directed by law enforcement, to obtain quick access to blocked Caller ID information needed to identify and thwart threatening callers. The Commission exempts threatening calls from blocked numbers from its caller privacy rules. Studies and reports show a disturbing increase in threatening calls in recent years. Many threatening calls come from blocked numbers. It directs carriers that upon report of such a threatening call by law enforcement on behalf of the threatened party, the carrier will provide any CPN of the calling party to law enforcement and, as directed by law enforcement, to security personnel for the called party for the purpose of identifying the party responsible for the threatening call. The Commission also amends its rules to allow non-public emergency services to obtain blocked Caller ID information associated with calls requesting assistance.

DATES: Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, except for 47 CFR 64.1601(d)(4)(ii) and (f), which contain new or modified information collection requirements that require review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), shall become effective 30 days after the Commission's publication of a document in the *Federal Register*, which will announce approval by OMB under the PRA.

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Report and Order, FCC 17-132, CC Docket No. 91-281, adopted on October 24, 2017, and released on October 25, 2017. The full text of this document will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. The full text of this document and any subsequently filed documents in this matter may also be found by searching ECFS at: <http://apps.fcc.gov/ecfs/> (insert CC Docket No. 91-281 into the Proceeding block).

Congressional Review Act

The Commission sent a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction Act of 1995 Analysis

This document contains modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements contained in Report and Order as required by the Paperwork Reduction Act (PRA) of 1995, Pub. L. 104–13. In addition, the Commission notes that, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107-198, 44 U.S.C. 3506(c)(4), the Commission previously sought comment on how the Commission might “further reduce the information burden for small business concerns with fewer than 25 employees.”

Synopsis

1. In Report and Order, the Commission helps security and law enforcement personnel obtain quick access to blocked Caller ID information needed to identify and thwart threatening callers. It also amends its rules to allow non-public emergency services to obtain blocked Caller ID information associated with calls requesting assistance.

2. The number of threatening phone calls has increased dramatically in recent years. These calls traumatize communities and result in substantial disruption to schools, religious organizations, and other entities. They also drain public resources by requiring the deployment of police and bomb units. Schools and others receiving threats have suggested that blocked Caller ID information hinders a rapid response.

The Commission's action moves away from case-by-case waivers to a streamlined approach that will help protect the safety of threatened parties in a timely way.

Caller ID Exemption for Threatening Calls

3. The Need for an Exemption. The Commission Modifies its Caller ID rules to exempt threatening calls from the Calling Party Number (CPN) privacy rules so that security personnel and law enforcement have quick access to information they need to aid their investigations. The Commission agrees with the vast majority of commenters that the exemption promotes public safety.

4. This new exemption is consistent with the Commission's prior approach in this area. The Commission has previously concluded, for example, that to the extent Caller ID 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. In these instances, the Commission concluded that Caller ID blocking mechanisms could jeopardize emergency services and therefore pose a serious threat to safety. The Commission believes that threatening calls present equally compelling circumstances in which the need to ensure public safety, in accordance with the Commission's fundamental statutory mission, outweighs any CPN privacy interest of the threatening caller.

5. The Commission disagrees with the sole commenter who urges it to not adopt an exemption but instead continue to issue case-by-case waivers, albeit on a streamlined basis. The waiver process, even if streamlined, would not provide equivalent benefits in combatting threatening calls. Investigation of these cases can depend on immediate action to stop a potentially catastrophic event. An exemption would allow for virtually immediate access to blocked Caller ID information upon proper request in threatening situations. The Commission thus agrees with the commenters who point out that threatening calls should be addressed immediately through an exemption in the Commission's rules rather than a case-by-case waiver process.

6. The Commission also disagrees with commenters who urge that carriers should have discretion to decline law enforcement requests to get Caller ID information. CTIA – The Wireless Association claims that a mandate is not necessary, noting both the industry's long and successful track record of cooperation

with law enforcement and that the Electronic Communications Privacy Act (ECPA) utilizes a voluntary disclosure provision. While the Commission believes that the industry's record may indeed be laudatory, the Commission concludes that mandatory disclosure is essential to its exemption. The Commission declines to define a "valid request" from law enforcement, as suggested by CenturyLink, because CTIA states carriers have an excellent track record of complying with law enforcement requests under ECPA. The Commission declines at this time to create a new law enforcement request process because the record reveals no evidence that law enforcement requests for this information have been ineffective or unreliable in the past. The record reveals no scenarios where a request for Caller ID by law enforcement, as the Commission describes below, should give carriers reason to question the validity of the emergency. Further, the imminent and grave nature of threatening calls, as defined below, leave little time for the exercise of discretion in whether to disclose information after law enforcement has become involved. As discussed below, the Commission adopts the ECPA standard for disclosure of information. The Commission does not find that standard to be inconsistent with a mandatory disclosure requirement. Carriers that are required to make disclosures in the very specific, narrowly defined scenario covered by the Commission's new exemption will not violate the more flexible ECPA standard by complying with the Commission's requirement. Moreover, the Commission believes that a law enforcement request based on the possibility of death or serious injury can satisfy ECPA's "good faith" standard to justify a carrier's voluntary disclosure of such information.

7. The Commission agrees with AT&T that carriers should not be subject to liability for violation of its Caller ID privacy rules if they disclose blocked Caller ID pursuant to the new exemption. As CTIA notes, "[l]aw enforcement has the experience and the thousands of officers in communities throughout the country who are already positioned to evaluate whether a threat is genuine." Law enforcement's determination of a threatening call coupled with the mandatory nature of the disclosure removes any justification for placing liability on carriers who comply with a proper request for blocked Caller ID. CTIA suggests that the Commission adopts a provision in its rule § 64.1601(b)'s stating that prohibition on overriding a privacy indicator does not apply when "CPN delivery ... (iv) Is provided in connection with any lawful request by a law enforcement agency for assistance in an emergency." Such a provision

is unnecessary in light of the Commission's existing rule, § 64.1601(d)(4)(iii), exempting "legally authorized call tracing or trapping procedures specifically requested by a law enforcement agency." To the extent that AT&T and NTCA – The Rural Broadband Association ask the Commission to somehow exempt carriers from any other legal liability, the Commission declines to do so. The Commission's concern is only with ensuring that its rules do not interfere with the ability of carriers to respond to law enforcement requests as allowed under law.

8. Definition of "Threatening Call." The Commission defines the term "threatening call," which triggers the application of the new exemption, as "any call that conveys an emergency involving danger of death or serious physical injury to any person requiring disclosure without delay of information relating to the emergency." Typically, a call from a person simply reporting a threat, where the facts of the call indicate that the caller wishes to remain anonymous, would not be subject to disclosure because disclosure would not be necessary to prevent death or serious bodily injury. In the event disclosure is necessary to prevent death or serious bodily injury, however, the rule would allow disclosure only to law enforcement. The Commission thinks this is appropriate and permitted by ECPA's emergency exception. The Commission does not wish to deter anonymous tips made to law enforcement. This definition ensures consistency with the emergency-disclosure provision of ECPA, as urged by several commenters, and because it satisfies the Commission's goal of targeting the most threatening calls. NCTA states that the Commission "should define a threatening call under § 64.1600 of its rules as 'any call that includes a threat involving danger of death or serious physical injury to any person.'" The Commission declines to use NCTA's definition because referring to "emergency" rather than to "threat" encompasses more situations where immediate disclosure is necessary to address an emergency. Additionally, its proposed definition is consistent with ECPA. Finally, the Commission includes "disclosure without delay" within the definition to further align its disclosure requirement under circumstances where ECPA allows it.

9. Because carriers are already familiar with the ECPA standard and ECPA covers the imminent nature of the dangers envisioned by the Caller ID NPRM, published at 82 FR 33856, July 21, 2017, and commenters, the Commission tailors its rule to align with the ECPA definition for purposes of this new exemption. The Commission agrees that it makes sense to align its definition of a threatening call with

existing federal law to ensure that carriers have consistent legal standards to apply in situations where both the Commission's rules and ECPA apply. The Commission also agrees with commenters that the ECPA definition would sufficiently cover the types of calls it seeks to exempt from the Caller ID blocking rule, without being either over- or under-inclusive, or including terms that could be ambiguous.

10. Law Enforcement Involvement. The Commission finds that, to ensure the exemption is not abused, a request for blocked Caller ID information associated with a threatening call must be made by law enforcement on behalf of the threatened party. The Commission believes that this requirement will, among other things, ensure that such requests concern a bona fide threatening call and will not be a pretext for obtaining blocked Caller ID for other purposes. As CTIA commented, such a requirement will ensure there is no ambiguity regarding the necessary level of law enforcement involvement.

11. The Commission agrees with commenters that law enforcement involvement at this stage of the process is essential to avoid having carriers make a determination on what constitutes a threatening call. AT&T avers that the involvement of law enforcement would help ensure compliance with the ECPA disclosure requirements, and would help prevent overbroad disclosures of blocked caller ID information that may harm the privacy of non-threatening callers. According to AT&T, law enforcement officials are “indisputably better qualified to validate the existence of emergency circumstances than carrier personnel,” and are likely more familiar with the facts giving rise to a requested disclosure. CTIA adds that requiring law enforcement involvement when restricted Caller ID information is requested would deter parties from manipulating the unblocking process. The Commission agrees with commenters that law enforcement personnel are in the best position to determine the existence of a credible threat that necessitates revealing CPN to investigate the threatening call.

12. Likewise, the Commission finds that only law enforcement personnel and, as directed by law enforcement, others directly responsible for the safety and security of the threatened party should receive the otherwise protected Caller ID information in the case of threatening calls. Security personnel may only receive the blocked Caller ID information from the providers as directed by law enforcement because law enforcement will generally be in a better position than providers to determine who qualifies as security personnel. The Commission limits the disclosure of the blocked Caller ID information to

prevent abuse, and to protect the privacy interests of parties who may block their Caller ID for valid privacy interests, such as domestic violence victims. By limiting the disclosure to law enforcement or, as directed by law enforcement, to security personnel for purposes of investigating a threat, the Commission seeks to prevent exploitations of the amended rule, such as an abuser tracking down a victim. The Commission defines security personnel as “those individuals directly responsible for maintaining safety of the threatened entity consistent with the nature of the threat.” For example, employees whose duties include security at an institution would qualify as security personnel; by contrast, an employee who merely answered the threatening phone or an individual homeowner would not. Security personnel may include, but are not limited to, corporate and government agency security personnel, and school or university security staff acting within the scope of their duties. In the case of an individual homeowner, law enforcement can take reasonable action to protect the homeowner as it conducts its investigation of a threatening call. The Commission allows disclosure to security personnel as directed by law enforcement to encompass situations where security personnel need access to the blocked Caller ID information for investigative purposes, as in instances when a large institution with its own security force, like a university or government agency, receives a threat.

13. The Commission agrees with CTIA’s recommendation that “called parties should not be the recipients of information,” and the “use of disclosed CPN should be restricted – by rule – in a manner consistent with prior waivers.” In its reply comments, NTCA asserts that, in times of exigency or in remote or insular areas, Caller ID information should be available to volunteer rescuers and similar non-law enforcement personnel with a safe harbor provision for carriers. The rules the Commission adopts here make Caller ID information available to “security personnel,” as directed by law enforcement, as well as law enforcement, and the Commission’s definition of “security personnel” does not necessarily exclude the types of situations NTCA describes. The determination NTCA urges would depend on the facts of a specific situation, and is, therefore, not appropriate for the general exemption the Commission adopts here. Accordingly, the Commission includes the following conditions in its rule for law enforcement or, as directed by law enforcement, security personnel of the called party investigating the threat: (1) the CPN on incoming restricted calls may not be passed on to the line called; (2) any system

used to record CPN must be operated in a secure way, limiting access to designated telecommunications and security personnel, as directed by law enforcement; (3) telecommunications and security personnel, as directed by law enforcement, may access restricted CPN data only when investigating calls involving danger of death or serious physical injury to any person requiring disclosure without delay of information relating to the emergency, and shall document that access as part of the investigative report; (4) carriers transmitting restricted CPN information must take reasonable measures to ensure the security of such 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. The Commission expects that these boundaries on how the disclosed Caller ID information must be treated will advance public safety efforts while protecting valid privacy interests. The Commission has imposed these conditions on waivers both to ensure that the Caller ID information in question is accessible only to persons with direct involvement in investigating the threatening calls and to ensure that the information is used only for that purpose. The Commission has no indication that these conditions did not properly protect privacy interests in the cases underlying the waivers, and the record does not reveal any reason to doubt their efficacy more generally.

14. Carrier Obligations Under Section 222 of the Act. The Commission finds that the disclosure required by the new exemption the Commission adopts here is consistent with section 222 of the Act. Section 222(a) of the Act states that “[e]very 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.” The Commission’s amended rule requiring carriers to disclose blocked Caller ID information when law enforcement requests it to investigate threatening calls does not contravene carriers’ obligations under section 222 of the Act.

15. In addressing the threatening calls recently received by Jewish Community Centers, the Bureau discussed section 222 of the Act in connection with the statutory protection of customer proprietary network information. The Commission agrees with the Bureau’s view that section 222(d) of the Act allows for carriers to disclose blocked Caller ID in the case of unlawful activity because section 222(d) of

the Act states, “[n]othing 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.” As described above, the Commission defines a “threatening call” as “any call that conveys an emergency involving danger of death or serious physical injury to any person requiring disclosure without delay of information relating to the emergency.” By limiting the disclosure of blocked Caller ID to narrowly defined cases of threatening calls that raise the “danger of death or serious physical injury to any person,” the Commission ensures that carriers are within their obligations under section 222 of the Act.

The Jewish Community Centers’ Temporary Waiver

16. 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 Jewish Community Centers (JCCs) in New York and across the nation. Senator Schumer noted that the Commission has played a valuable role in ensuring law enforcement and others are not hindered in their access to the caller information of threatening calls and suggested consideration of the grant of a waiver. On March 3, 2017, CGB granted to JCCs, and any carriers that serve JCCs, a temporary, emergency waiver of § 64.1601(b) of the Commission’s rules. In so doing, CGB indicated that this temporary waiver would remain in effect until the Commission determined whether the waiver should be made permanent. In addition, CGB sought comment on whether to make this waiver permanent. Comments filed in response support the waiver and note the public interest in promoting efforts to identify and thwart individuals making threatening calls to JCCs. No commenter opposed the waiver.

17. In the Caller ID NPRM, the Commission confirmed that good cause continued to exist to maintain the temporary waiver of § 64.1601(b) of the Commission’s rules granted to JCCs and the carriers who serve them for disclosure of CPN associated with threatening calls. The Caller ID NPRM stated that in the event the Commission were to amend its rules to recognize a more general exemption for threatening calls, the JCC waiver would be encompassed within the protections afforded by that exemption. In Report and Order, the Commission recognizes an exemption for threatening calls thereby

encompassing the JCC waiver. Accordingly, the JCC waiver is no longer necessary, and is superseded by document FCC 17-32 and terminated as of the effective date of the rule changes adopted herein.

Exemption for Non-Public Entities Providing Emergency Services

18. The Commission also amends its rules to allow non-public emergency services to receive the CPN of all incoming calls from blocked numbers requesting assistance. The Commission believes amending its rules to allow non-public emergency services access to blocked Caller ID promotes the public interest by ensuring timely provision of emergency services without undermining any countervailing privacy interests.

19. The Commission previously concluded that “[t]o the extent that CPN-based services are used to deliver emergency services, the Commission finds 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” and has noted that “in an emergency, a caller is not likely to remember to dial or even know to dial an unblocking code.” Here the Commission takes its previous conclusions a logical step further by amending the rules to allow non-public emergency services to retrieve from carriers the blocked Caller ID of callers seeking assistance. The Commission believes these callers would want an emergency service, whether a public agency or non-public entity, to be able to quickly and easily contact or locate them using their phone number to provide assistance.

20. The Bureau previously waived the Caller ID privacy rule for a private ambulance service, Chevrah Hatzalah Volunteer Ambulance Corps Inc. (Hatzalah). In granting the waiver, the Bureau noted that Hatzalah’s automatic dial retrieval system “. . . is disrupted when the incoming call comes from a caller who has requested that his/her number not be revealed to the called party. In this circumstance, Hatzalah states that the inability to automatically identify callers creates several problems that can delay or even prevent the timely provision of emergency care.” In its petition, Hatzalah further argued that allowing it to access blocked Caller ID information “would not frustrate [the] purpose [of the Commission’s rule] because the Commission has recognized that a caller’s privacy interest should not interfere with the delivery of emergency services.”

21. The Bureau found that the waiver served the public interest “because Hatzalah will be better able

to respond to emergency situations by saving the crucial time taken when requesting phone number and location information from the caller.” The Bureau also noted, “. . . people seeking emergency services are often under great stress when they call, which can lead to difficulty in accurately communicating the vital telephone number and location information.” Finally, the Bureau agreed with Hatzalah “that a caller seeking emergency services has an interest in the number becoming known to the emergency provider to speed the provision of emergency services and, therefore, any privacy concerns are minimized in this context.”

22. In the Caller ID NPRM, the Commission sought comment on whether it should extend the proposed exemption to non-public entities that provide emergency services such as private ambulance companies. Hatzalah urges us to amend its rules for the same reasons the Bureau granted it a waiver so that other non-public emergency services will also have access to blocked Caller ID to provide the requested assistance. The Commission agrees that the Hatzalah Order’s reasoning should apply more generally and find that allowing non-public emergency services to access blocked Caller ID promotes public safety and does not undermine any countervailing privacy interests associated with revealing CPN. 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, Order, 28 FCC Rcd 1253 (CGB 2013) (order was not published in the Federal Register). In order to facilitate the public safety goals of non-public emergency services, the Commission amends its Caller ID privacy rules to allow such services to obtain blocked Caller ID from carriers.

23. Consistent with the Hatzalah Order, entities providing emergency services must be licensed by a state or municipality to provide such services to qualify for this exemption. Unlike the threatened callers discussed above, non-public emergency services do not have to act in conjunction with law enforcement to obtain blocked Caller ID information from carriers. Involving public emergency services in this scenario would undermine the goal of allowing providers of emergency services to provide quick and effective assistance to individuals seeking such assistance.

Final Regulatory Flexibility Act Analysis

24. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA), the Commission

incorporated an Initial Regulatory Flexibility Analysis (IRFA) into the Caller ID NPRM. The Commission sought written comment on the proposals in the Caller ID NPRM, including comment on the IRFA. No comments were received on the IRFA.

Need for, and Objectives of, the Order

25. The Report and Order takes an important step to help security and law enforcement personnel responsible for the safety of parties receiving certain threatening calls obtain quick access to the Caller ID information needed to identify and thwart threatening callers. The Report and Order moves away from case-by-case waivers to the streamlined approach necessary to help protect the safety of threatened parties in a timely way. Specifically, Report and Order clears the way for carriers to disclose blocked Caller ID information associated with threatening calls to facilitate the investigation of such threats and amends the Commission's rules to allow non-public emergency services to obtain blocked Caller ID information associated with calls requesting assistance.

26. Caller ID Exemption for Threatening Calls. The Report and Order modifies the Commission's Caller ID rules to exempt threatening calls from the CPN privacy rules, so that security personnel and associated law enforcement have quick access to information they need to aid their investigations. The Report and Order defines the term "threatening call," which triggers the application of the new exemption, as "any call that conveys an emergency involving danger of death or serious physical injury to any person requiring disclosure without delay of information relating to the emergency." This definition is consistent with the emergency-disclosure provision of ECPA, and it satisfies the Commission's goal of targeting the most threatening calls.

27. Law Enforcement Involvement. To ensure the exemption is not abused, a request for blocked Caller ID associated with a threatening call must be made by law enforcement on behalf of the threatened party. The Commission believes that this requirement will, among other things, ensure that such requests concern a bona fide threatening call and will not be a pretext for obtaining blocked Caller ID for other purposes.

28. Only Law Enforcement and Security Personnel Receive Blocked Caller ID. Only law enforcement personnel and others responsible for the safety and, as directed by law enforcement, security

personnel of the threatened party should receive the otherwise protected Caller ID information in the case of threatening calls. The Report and Order limits the disclosure of the blocked Caller ID information to prevent abuse of the disclosure process, and to protect the privacy interests of parties who may block their Called ID for valid privacy interests, such as domestic violence victims. The Report and Order defines security personnel as "those individuals directly responsible for maintaining safety of the threatened entity consistent with the nature of the threat."

29. Conditions on Receipt of Blocked Caller ID Information. The Report and Order includes the following conditions in the Commission's rule for law enforcement or security personnel of the called party investigating the threat: (1) the CPN on incoming restricted calls may not be passed on to the line called; (2) any system used to record CPN must be operated in a secure way, limiting access to designated telecommunications and, as directed by law enforcement, security personnel; (3) telecommunications and, as directed by law enforcement, security personnel may access restricted CPN data only when investigating calls involving danger of death or serious physical injury to any person requiring disclosure without delay of information relating to the emergency, and shall document that access as part of the investigative report; (4) carriers transmitting restricted CPN information must take reasonable measures to ensure the security of such 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.

30. Carrier Obligations Under Section 222 of the Act. The disclosure required by the new exemption adopted in the Report and Order is consistent with section 222 of the Act. Section 222(a) of the Act states that "[e]very 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." The Commission's amended rule requiring carriers to disclose blocked Caller ID information when law enforcement requests it does not contravene carriers' obligations under section 222 of the Act.

31. Jewish Community Center Temporary Waiver. The Report and Order recognizes an exemption

for threatening calls thereby encompassing the JCC waiver. Accordingly, the JCC waiver is no longer necessary, and is superseded by the Report and Order.

32. Non-Public Emergency Services. The Report and Order also amends the Commission's rules to allow non-public emergency services to receive the CPN of all incoming calls from blocked numbers requesting assistance. Amending the Commission's rules to allow non-public emergency services access to blocked Caller ID promotes the public interest by ensuring timely provision of emergency services without undermining any countervailing privacy interests.

Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

33. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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

34. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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. Nationwide, there are a total of approximately 28.8 million small businesses, according to the SBA.

Wireline Carriers

35. 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." 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. 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. Thus, under this size standard, the majority of firms in this industry can be considered small.

36. 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." Under that size standard, such a business is small if it has 1,500 or fewer employees. 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. Consequently, the Commission estimates that most providers of local exchange service are small businesses.

37. 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." Under that size standard, such a business is small if it has 1,500 or fewer employees. 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. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses.

38. Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission 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." Under that size standard, such a business is small if it has 1,500 or fewer employees. 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. 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.

39. The Commission has 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." 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. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

40. Interexchange Carriers. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services (IXCs). 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." Under that size standard, such a business is small if it has 1,500 or fewer employees. 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. Consequently, the Commission estimates that the majority of IXCs are small entities.

41. 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.” Under that size standard, such a business is small if it has 1,500 or fewer employees. 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. Thus, under this category and the associated small business size standard, the majority of other toll carriers can be considered small.

Wireless Carriers

42. Wireless Telecommunications Carriers (except Satellite). Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. 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. 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. Of this total, an estimated 261 have 1,500 or fewer employees. Thus, using available data, the Commission estimates that the majority of wireless telecommunications carriers

can be considered small.

43. 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.” This category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules. For this category, Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of under \$25 million. Consequently, the Commission estimates that the majority of satellite telecommunications firms are small entities.

44. All Other Telecommunications. All other telecommunications comprise, *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.” The SBA has developed a small business size standard for the category of All Other Telecommunications. Under that size standard, such a business is small if it has \$32.5 million in annual receipts. For this category, Census Bureau data for 2012 show that there were a total of 1,442 firms that operated for the entire year. Of this total, 1,400 had annual receipts below \$25 million per year. Consequently, the Commission estimates that the majority of all other telecommunications firms are small entities.

Resellers

45. 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. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 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. 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. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

46. 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. Under that size standard, such a business is small if it has 1,500 or fewer employees. 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. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities.

47. 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. Under that size standard, such a business is small if it has 1,500 or fewer employees. 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. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

48. The Report and Order creates an exemption for threatening calls and calls to non-public emergency services from the Commission's Caller ID privacy rules. These changes affect small and large companies equally, and apply equally to all classes of regulated entities identified above.

49. Reporting and Recordkeeping Requirements. There are no new reporting requirements. The Report and Order amends the caller privacy rules to exempt threatening calls from the CPN privacy rules, so that associated law enforcement and, as directed by law enforcement, security personnel have quick access to information they need to aid their investigations. Voice service providers do not need to change their current recordkeeping as they have been able to provide CPN when requested in the past.

50. The Report and Order adds a recordkeeping requirement. The Commission amends its rules to allow non-public emergency services to obtain blocked Caller ID information associated with calls requesting assistance. Voice service providers will need to keep a record of when they provide blocked Caller ID associated with calls requesting assistance to non-public emergency services providers.

51. Other Compliance Requirements. Voice service providers will be required to release blocked Caller ID information when it is requested by law enforcement in conjunction with circumstances amounting to a threatening call and when a non-public emergency service requests blocked Caller ID. To do so, voice service providers must comply with law enforcement requests for CPN as they currently do under ECPA. The Commission anticipates the impact will be small because of the statutory requirements already in place.

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

52. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) the establishment of differing compliance or reporting requirements 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 entities.

53. The Commission considered feedback from the Caller ID NPRM in crafting the final order. The Commission evaluated the comments in light of the goal of removing regulatory roadblocks to help security and law enforcement personnel responsible for the safety of parties receiving certain threatening calls obtain quick access to the Caller ID information needed to identify and thwart threatening callers. While a commenter suggested permissive rules, the Commission implemented mandatory rules in light of public safety concerns. The Commission adopts an exemption instead of simply streamlining the waiver process to allow for virtually immediate access to blocked Caller ID information upon proper request in threatening situations. The Commission considered continuing the waiver process, but inherent delays in the waiver process do not meet the goal of streamlining access to information needed to investigate threatening calls. In addition, the Commission reduced uncertainty, burdens and costs on small business providers that seek to relay the blocked Caller ID information, by putting the identification of "security personnel" in the hands of law enforcement as opposed to providers.

54. The Commission does not see a need to establish a special timetable for small entities to reach compliance with the modification to the rules. No small business has asked for a delay in implementing the rules. In considering the burden on small business, the Commission notes that they already have responsibilities under ECPA, and the Commission aligns its threatening call definition with that of ECPA. Similarly, there are no design standards or performance standards to consider in this rulemaking.

Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Rules

55. None.

Ordering Clauses

56. Pursuant to the authority contained in sections 1-4, 201 and 222 of the Communications Act of

1934, as amended, 47 U.S.C. 151-154, 201, 222, This Report and Order IS ADOPTED and that part 64 of the Commission's rules, 47 CFR 64.1600, 64.1601, are amended.

57. The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, sent a copy of the Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications,
Telephone.

FEDERAL COMMUNICATIONS COMMISSION.

Katura Jackson,
Federal Register Liaison Officer.
Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 225, 254(k), 403(b)(2)(B), (c), 715, Pub. L. 104–104, 110 Stat. 56.

Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

2. Amend § 64.1600 by adding paragraph (l) to read as follows

§ 64.1600 Definitions.

* * * * *

(l) Threatening Call. The term “threatening call” is any call that conveys an emergency involving danger of death or serious physical injury to any person requiring disclosure without delay of information relating to the emergency.

3. Amend § 64.1601 by revising paragraph (d)(4)(ii) and by adding paragraphs (f) and (g) to read as follows:

§ 64.1601 Delivery requirements and privacy restrictions.

(d) * * *

(4) * * *

(ii) Is used on a public agency’s emergency telephone line or in conjunction with 911 emergency services, on a telephone line to contact non-public emergency services licensed by the state or municipality, or on any entity’s emergency assistance poison control telephone line; or

* * * * *

(f) Paragraph (b) of this section shall not apply when CPN delivery is made in connection with a threatening call. Upon report of such a threatening call by law enforcement on behalf of the threatened party, the carrier will provide any CPN of the calling party to law enforcement and, as directed by law enforcement, to security personnel for the called party for the purpose of identifying the party responsible

for the threatening call.

(g) For law enforcement or security personnel of the called party investigating the threat:

(1) The CPN on incoming restricted calls may not be passed on to the line called;

(2) Any system used to record CPN must be operated in a secure way, limiting access to designated telecommunications and security personnel, as directed by law enforcement;

(3) Telecommunications and security personnel, as directed by law enforcement, 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) Carriers transmitting restricted CPN information must take reasonable measures to ensure security of such 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.

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