



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 09-240
February 13, 2009

**Enforcement Bureau Reminds Carriers of March 1 Deadline and Provides Further Guidance
on Filing of Annual Customer Proprietary Network Information (CPNI) Certifications
Under 47 C.F.R. §64.2009(e)**

EB Docket No. 06-36

In this Public Notice, the Enforcement Bureau (Bureau) again reminds all companies subject to its CPNI rules of their obligation to file their CPNI Certification **no later than March 1, 2009**. Certifications must be filed in accordance with the instructions provided below.

Background. On April 2, 2007, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking* in CC Docket No. 96-115 and WC Docket No. 04-36 (*EPIC CPNI Order*)¹ in which the Commission strengthened its privacy rules, pursuant to section 222 of the Communications Act, as amended, by adopting additional safeguards to protect CPNI against unauthorized access and disclosure.² One important change to the existing CPNI rules adopted in the *EPIC CPNI Order* is the requirement that all companies subject to the CPNI rules file annually, on or before March 1, a certification with the Commission pursuant to amended rule 47 C.F.R. § 64.2009(e).³ The Bureau issued Public Notices on January 29, 2008,⁴ and on January 7, 2009,⁵ providing guidance on the annual filing requirement and a suggested template for companies to use to fulfill the filing mandate.

¹*Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115; WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007) (“EPIC CPNI Order”).

² See 47 U.S.C. § 222.

³ 47 C.F.R. § 64.2009(e) states: “A telecommunications carrier must have an officer, as an agent of the carrier, sign and file with the Commission a compliance certificate on an annual basis. The officer must state in the certification that he or she has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the rules in this subpart. The carrier must provide a statement accompanying the certification explaining how its operating procedures ensure that it is or is not in compliance with the rules in this subpart. In addition, the carrier must include an explanation of any actions taken against data brokers and a summary of all customer complaints received in the past year concerning the unauthorized release of CPNI. This filing must be made annually with the Enforcement Bureau on or before March 1 in EB Docket No. 06-36, for data pertaining to the previous calendar year.”

⁴ EB Provides Guidance on Filing of 2008 Annual Customer Proprietary Network Information (CPNI) Certifications Under 47 C.F.R. § 64.2009(e), Public Notices, 23 FCC Rcd 903 (Jan. 29, 2008)

⁵ EB Provides Guidance on Filing of 2008 Annual Customer Proprietary Network Information (CPNI) Certifications Under 47 C.F.R. § 64.2009(e), Public Notice, DA 09-9 (Jan. 7, 2009)

To further assist companies in meeting their obligations under Section 64.2009(e), the Bureau also responds to requests for guidance and answers frequently asked questions regarding the annual CPNI certification.

Who is required to file?

Section 64.2009(e) of the Commission's rules applies to telecommunications carriers and to interconnected VoIP providers.

- The term “telecommunications carrier” is defined in the Act to mean “any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226)⁶...” 47 U.S.C § 153(44). Telecommunications service is defined in the Act as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” 47 U.S.C. § 153(46).
 - Companies that fall under the definition and must file an annual certification **include, but are not limited to:** LECs (including ILECs, rural LECs and CLECs), IXCs, paging providers, CMRS providers, resellers, prepaid telecommunications providers, and calling card providers. **This list is not exhaustive.**
 - Interconnected VoIP providers provide a service that: “(1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user’s location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and terminate calls to the public switched network.” 47 C.F.R. § 9.3.

Does the rule apply differently to small companies or is there an exception to the rule for small companies?

Section 64.2009(e) – the annual certification filing requirement – applies equally regardless of the size of the company. There is no exception for small companies.

What must be included in the filing?

The annual certification must include all of the elements of the rule (quoted above at footnote 3). A suggested template incorporating the rule requirements is attached at the end of this Public Notice. Two aspects that seem to be least complied with include: (1) the requirement that the officer signing the certification affirmatively state that he or she has personal knowledge that the company has established operating procedures that are adequate to ensure compliance; and (2) the requirement that the carrier provide a statement accompanying the certification explaining how its operating procedures ensure that it is or is not in compliance with the rules. Simply stating that the company has adopted operating procedures without explaining how compliance is being met does not satisfy this requirement.

How did the EPIC CPNI Order change the certification requirement?

The *EPIC CPNI Order* adopted three changes to the CPNI certification requirement:

1. The certification must now be filed annually with the Commission, rather than being maintained on the company’s premises and available to the public.
2. The company must include an explanation of any actions taken against data brokers in the past year.
3. The company must include a summary of all customer complaints received in the past year concerning the unauthorized release of CPNI.

⁶ Section 226 defines an aggregator as “any person that, in the ordinary course of its operations, makes telephones available to the public or transient users of its premises, for interstate telephone calls using a provider of operator services.” 47 U.S.C §226(a)(2).

When are companies required to file the annual certification?

Companies must file between January 1 and March 1, annually. In the *EPIC CPNI Order*, the Commission decided that carriers should file annually for data pertaining to the previous calendar year. Accordingly, certifications filed before January 1 are non-compliant because, by definition, they cannot include information pertaining to the entire calendar year, which ends December 31.

Is this the same as my form 499 filing or my USF filing?

No, the annual CPNI certification filing is a different filing from form 499 filings or USF filings.

Is there a required form or format I should use in filing my certification?

The Commission's rules do not require a certain form or format to be used by companies subject to the rule in filing their annual CPNI certification. For convenience and to assist companies in meeting the requirements of the rule, the Bureau provides the attached suggested template that filing entities can use to meet the annual certification filing requirement of 47 C.F.R. § 64.2009(e). Use of this template is not mandatory, and any document that meets the requirements of the rule may be filed. Parties that elect to use the suggested template are encouraged to review the template carefully and to ensure that all fields are fully completed before submission in the above-referenced docket.

Filing procedures. All filings are to reference **EB Docket No. 06-36**. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Suite TW-A325, Washington, DC 20554. Two (2) courtesy copies must be delivered to Federal Communications Commission, Enforcement Bureau, Telecommunications Consumers Division, 445 12th Street, SW, Washington, DC 20554, and one (1) copy must be sent to Best Copy and Printing, Inc., 445 12th Street, Suite CY-B402, Washington, DC 20554, telephone 202-488-5300, facsimile 202-488-5563, or via e-mail FCC@BCPIWEB.COM.

Certifications may be filed: (1) using the Commission's Electronic Comment Filing System (ECFS); (2) or by filing paper copies.

- **Electronic Filers:** Certifications may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>. Filers should follow the instructions provided on the website for submitting comments.
- In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

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

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-488-5300, facsimile 202-488-5563, or via e-mail FCC@BCPIWEB.COM.

For further information, please contact Edward Hayes at 202-418-2410, Robert Somers at 202-418-1483, Donna Cyrus at 202-418-7325, Kim Wild at 202-418-1324, or Marcy Greene at 202-418-2410.

Annual 47 C.F.R. § 64.2009(e) CPNI Certification

EB Docket 06-36

Annual 64.2009(e) CPNI Certification for [year]

Date filed: [date]

Name of company covered by this certification: [company]

Form 499 Filer ID: [Provide ID]

Name of signatory: [name]

Title of signatory: [title]

I, [name of officer signing certification], certify that I am an officer of the company named above, and acting as an agent of the company, that I have personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the Commission's CPNI rules. *See* 47 C.F.R. § 64.2001 *et seq.*

Attached to this certification is an accompanying statement explaining how the company's procedures ensure that the company [is/ is not] in compliance with the requirements set forth in section 64.2001 *et seq.* of the Commission's rules [attach accompanying statement].

The company [has/has not] taken any actions (proceedings instituted or petitions filed by a company at either state commissions, the court system, or at the Commission against data brokers) against data brokers in the past year. Companies must report on any information that they have with respect to the processes pretexters are using to attempt to access CPNI, and what steps companies are taking to protect CPNI.

If affirmative: [Provide explanation of any actions taken against data brokers]

The company [has/has not] received any customer complaints in the past year concerning the unauthorized release of CPNI (number of customer complaints a company has received related to unauthorized access to CPNI, or unauthorized disclosure of CPNI, broken down by category or complaint, *e.g.*, instances of improper access by employees, instances of improper disclosure to individuals not authorized to receive the information, or instances of improper access to online information by individuals not authorized to view the information).

If affirmative: [Provide summary of all customer complaints received in the past year concerning the unauthorized release of CPNI.]

Signed _____ [electronic signature]