

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Rules and Policies Regarding Calling Number
Identification Service – Caller ID
Petition of National Aeronautics and Space
Administration for Waiver of Federal
Communications Commission Regulations at
47 C.F.R. § 64.1601(b)
CC Docket No. 91-281

ORDER

Adopted: May 23, 2012

Released: May 23, 2012

By the Acting Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Order, we grant a petition filed by the National Aeronautics and Space Administration (NASA), John F. Kennedy Space Center (KSC), requesting a limited waiver of section 64.1601(b) of the Commission’s rules, which prohibits terminating carriers from passing the calling party number (CPN) to the called party where a privacy request has been made by the caller. Specifically, we conclude that granting this request, under the conditions specified herein, will serve the public interest by allowing security and law enforcement personnel to rapidly respond to threatening telephone calls made to the KSC, thereby protecting national security interests without undermining the policy objectives of the Commission’s CPN rules.

II. BACKGROUND

A. The CPN Rules

2. In 1994, the Commission adopted rules that require common carriers using Signaling System 7 (SS7) to transmit the CPN on interstate calls to interconnecting carriers. The Commission concluded

1 See Petition of National Aeronautics and Space Administration for Waiver of Federal Communications Commission Regulations at 47 C.F.R. § 64.1601(b), filed Oct. 25, 2006 in CC Docket No. 91-281 (NASA-KSC Petition). We note that NASA limits its waiver request to the KSC facility. Therefore, the waiver granted herein applies only to that facility and not the entire agency.

2 The Commission’s rules define CPN as “the subscriber line number or the directory number contained in the calling party number parameter of the call set-up message associated with an interstate call on a Signaling System 7 network.” 47 C.F.R. § 64.1600(e). Associated with the CPN is a Privacy Indicator “that indicates whether the calling party authorizes presentation of the calling party number to the called party.” 47 C.F.R. § 64.1600(j).

3 See Rules and Policies Regarding Calling Number Identification Service – Caller ID, CC Docket No. 91-281, Report and Order and FNPRM, 9 FCC Rcd 1764 (1994) (Caller ID Order); see also 47 C.F.R. § 64.1601(a). The

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that passage of CPN over interstate facilities made possible a wide range of services, and that promoting the development of such services was consistent with the Commission's responsibilities under the Communications Act.⁴ In particular, the Commission concluded that requiring CPN transmission would bring consumers more rapid and efficient service and encourage the introduction of new technologies and services to the public.⁵

3. At the same time, the Commission recognized that unrestricted CPN transmission could intrude upon the privacy of calling parties wishing to remain anonymous.⁶ Therefore, the Commission established privacy options to allow callers to restrict the transmission of their telephone numbers.⁷ For example, the Commission's rules require carriers using SS7 to recognize *67 as a request that they not pass the calling party's number.⁸ Section 64.1601(b) provides that "[n]o common carrier subscribing to or offering any service that delivers CPN may override the privacy indicator associated with an interstate call."⁹

4. The Commission has concluded, however, that in certain limited circumstances, the public interest requires CPN transmission despite any countervailing privacy request from the calling party.¹⁰ For example, the Commission has stated that, "[t]o the extent that CPN-based services are used to deliver emergency services, we find 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."¹¹

B. NASA Petition

5. NASA has filed a petition on behalf of KSC for limited waiver of section 64.1601(b) of the Commission's rules, which prohibits terminating carriers from passing CPN where the caller has made a

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rules require the same of carriers "offering or subscribing to any service based on Signaling System 7 functionality." 47 C.F.R. § 64.1601(a).

⁴ *Caller ID Order*, 9 FCC Rcd at 1769, para. 34.

⁵ *Id.* at 1766, para. 8.

⁶ *Id.* at 1769, para. 34.

⁷ See 47 C.F.R. § 64.1601(b); see also *Rules and Policies Regarding Calling Number Identification Service – Caller ID*, CC Docket No. 91-281, Memorandum Opinion and Order on Reconsideration, Second Report and Order and Third Notice of Proposed Rulemaking, 10 FCC Rcd 11700, 11728-29, paras. 81-84 (1995).

⁸ 47 C.F.R. § 64.1601(b).

⁹ *Id.* In addition, section 64.1601(b) provides that, "[c]arriers must arrange their CPN-based services, and billing practices, in such a manner that when a caller requests that the CPN not be passed, a carrier may not reveal that caller's number or name, nor may the carrier use the number or name to allow the called party to contact the calling party."

¹⁰ See 47 C.F.R. § 64.1601(d).

¹¹ *Caller ID Order*, 9 FCC Rcd at 1770, para. 37; see also 47 C.F.R. § 64.1601(d)(4)(ii); *INSIGHT 100 Petition for Waiver of § 64.1601(b) Regarding the Transmission of Calling Party Number*, CC Docket No. 91-281, Memorandum Opinion and Order, 17 FCC Rcd 223 (CCB 2002) (*INSIGHT Order*) (waiving section 64.1601(b) on behalf of certain universities and hospitals).

privacy request.¹² KSC is a spaceport in Florida with approximately 17,000 employees where most United States space launches occur.¹³ According to NASA, KSC provides its own security, fire and rescue, telecommunications and other utility services.¹⁴ KSC reports receiving between 12 and 20 threatening phone calls annually that are considered “serious in nature.”¹⁵ NASA states that the telecommunications carriers that service KSC are bound by the CPN requirements, and parties placing threatening calls often use CPN privacy restrictions to prevent authorities from identifying their location.¹⁶ As a result, KSC security personnel must request a trace of threatening calls in order to locate the perpetrator, a process which NASA indicates can take up to a week.¹⁷

6. NASA argues that its petition shows good cause to warrant a limited waiver of the CPN rules. First, NASA notes that KSC provides both the security service and end office telecommunications to all locations within its geographic boundaries.¹⁸ As a result, NASA maintains that the waiver would be applicable only to a narrow and well-defined public institution, making the waiver predictable, workable, and not subject to discriminatory application.¹⁹ Second, NASA asserts that the KSC security services are impaired by any delay in obtaining CPN from threatening callers.²⁰ NASA avers that granting this waiver will serve the public interest by allowing security and law enforcement personnel to better ensure the safety of its employees by providing a more rapid response to the numerous threatening calls made each year to the KSC facility.²¹ In addition, NASA provides specific examples of threatening calls made to the KSC facility.²²

7. NASA proposes to limit the scope of its waiver by allowing the SecureLogix²³ system to record the CPN of incoming restricted calls (thus allowing KSC security personnel to use it under the circumstances we describe here) but not pass the CPN on to the called party.²⁴ In addition, NASA states that it will further limit access to restricted CPN information in several respects to ensure the

¹² See generally *NASA-KSC Petition*. On Jan. 4, 2012, NASA filed an *ex parte* letter confirming its continued interest in this matter. In addition, NASA provided more recent examples of threatening and harassing phone calls. See Letter from Geoffrey Swanson, Deputy Chief Counsel, John F. Kennedy Space Center, to FCC, CC Docket 91-281 (filed Jan. 4, 2012).

¹³ See *NASA-KSC Petition* at 2.

¹⁴ *Id.*

¹⁵ *Id.* at 3.

¹⁶ *Id.*

¹⁷ *Id.* (providing several examples of delays caused in tracking down the source of such threatening calls due to the CPN privacy requirements).

¹⁸ *Id.* at 7-8.

¹⁹ *Id.* at 9.

²⁰ *Id.* at 7, 9.

²¹ *Id.* at 8.

²² *Id.* at 3-4.

²³ According to NASA, KSC’s telecommunications assets include a Central Office Switch facility with a SecureLogix call information data log capable of recording all originating and terminating numbers. *Id.* at 8.

²⁴ *Id.*

confidentiality of the CPN.²⁵ These measures include: (1) operating the SecureLogix in a secure facility, using passwords to protect the data and limiting access to the information to designated telecommunications and security personnel who have signed non-disclosure agreements; (2) allowing telecommunications and security personnel to access restricted CPN data only when investigating harassing or threatening phone calls and requiring them to document the access as part of the investigative report; (3) allowing transmission of restricted CPN information from KSC to other law enforcement agencies only through secure communications; and (4) destroying CPN information after a reasonable retention period.²⁶

8. The Consumer and Governmental Affairs Bureau released a Public Notice in CC Docket No. 91-281 seeking comment on the *NASA-KSC Petition*.²⁷ No comments were received in response to this Public Notice.

C. Waiver Standard

9. The Commission may waive any of its rules if the petitioner shows “good cause.”²⁸ A waiver may be granted if: (1) the waiver would better serve the public interest than would application of the rule; and (2) special circumstances warrant a deviation from the general rule.²⁹ Circumstances that would justify a waiver include “considerations of hardship, equity, or more effective implementation of overall policy.”³⁰ The waiver must have identifiable standards that are predictable, workable, and not susceptible to discriminatory application.³¹ Generally, the Commission may grant a waiver of its own rules if the relief requested would not undermine the policy objectives of the rule in question, and would otherwise serve the public interest.³²

III. DISCUSSION

10. We conclude that, subject to certain conditions, NASA’s petition meets the standards for granting a limited waiver of section 64.1601(b) while not undermining the privacy objectives of that rule. We find here, as the Commission has previously, specific circumstances where the need to ensure public safety takes precedence over a caller’s interest in maintaining the privacy of his or her telephone

²⁵ *Id.*

²⁶ *Id.*

²⁷ See *Consumer & Governmental Affairs Bureau Seeks Comment on National Aeronautics and Space Administration, John F. Kennedy Space Center Petition for Waiver of 47 C.F.R. § 64.1601(b) Regarding the Transmission of Calling Party Number*, CC Docket No. 91-281, Public Notice, 21 FCC Rcd 13132 (CGB 2006). The Public Notice was published in the Federal Register on November 29, 2006 (71 Fed. Reg. 69094-01).

²⁸ 47 C.F.R. § 1.3; *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

²⁹ *Northeast Cellular*, 897 F.2d at 1166.

³⁰ *WAIT Radio*, 418 F.2d at 1159.

³¹ *Northeast Cellular*, 897 F.2d at 1166.

³² *WAIT Radio*, 418 F.2d at 1157.

number.³³ As noted above, for example, the Commission has found that “[t]o the extent that CPN-based services are used to deliver emergency services, we find 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.”³⁴ In addition, the Commission has found that the disclosure of caller ID does not violate any privacy rights protected by the U.S. Constitution.³⁵

11. We grant NASA’s request for a limited waiver subject to the conditions discussed herein. First, we conclude that a limited waiver of section 64.1601(b) serves the “public interest” in this instance because KSC will be better able to protect the safety of its employees by reducing the time required to identify and apprehend the perpetrators of threatening telephone calls.³⁶ NASA provides several examples of delays caused in identifying individuals that posed a potentially serious threat to its facility as a result of strict compliance with the CPN rules.³⁷ In one such instance, the threatening caller was apprehended only after attempting to gain entrance to the KSC facility with a concealed handgun.³⁸

12. Second, we find that special circumstances warrant a deviation from the general rule. The NASA KSC facility is a high-profile, U.S. government institution responsible for matters of national importance and national security, such as space launches involving classified as well as non-classified missions. The record indicates that the KSC facility: (1) receives numerous threatening phone calls that are serious in nature each year; (2) provides both end office-equivalent communications service and public safety functions that are impaired by any delay in obtaining CPN; (3) provides work place facilities and services 24 hours per day to 17,000 employees; and (4) constitutes a defined location within distinct geographic boundaries. As the waiver granted herein applies only to a narrow and well-defined public institution, we conclude that the waiver is predictable, workable, and not subject to discriminatory application. As discussed below, we also condition the approval of this waiver on implementation of several safeguards consistent with the privacy objectives of the CPN rules to protect the confidentiality of calling parties.³⁹ In addition, we recognize that KSC’s circumstances may change or threats may diminish which necessitate the granting of this waiver. Therefore, we require NASA-KSC to monitor and report to the Commission whether and how this waiver has enhanced the ability of its KSC security personnel to ensure the safety of its employees, including specific examples of such instances. We require NASA to file this report no later than six and 18 months after the release date of this Order in CC Docket No. 91-281. These reports will cover the periods from the release date of this Order until the reporting date.⁴⁰ We intend to monitor the results of this waiver, to inform us when considering any similar requests in the future.

³³ See, e.g., *Caller ID Order*, 9 FCC Rcd at 1770, para. 37; *INSIGHT Order*, 17 FCC Rcd at 225-26, paras. 8-12; 47 C.F.R. § 64.1601(d).

³⁴ *Caller ID Order*, 9 FCC Rcd at 1770, para. 37.

³⁵ *Id.* at 1769, para. 30.

³⁶ *NASA-KSC Petition* at 2, 7.

³⁷ *Id.* at 3-4.

³⁸ *Id.* at 4.

³⁹ *Id.* at 8.

⁴⁰ Specifically, these reporting periods will cover the timeframes from zero-to-six and zero-to-18 months following the release date of this Order, respectively.

13. *Conditions of Waiver.* The limited waiver granted herein is subject to the following conditions:⁴¹ (1) the CPN of incoming restricted calls to KSC may not be passed on to the number called;⁴² (2) the SecureLogix system used to record CPN shall be operated in a secure facility, using passwords to protect the data and limiting access to designated telecommunications and security personnel who have signed non-disclosure agreements; (3) telecommunications and security personnel 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) transmission of restricted CPN information from KSC to other law enforcement agencies must occur only through secure communications; (5) CPN information must be destroyed in a secure manner after a reasonable retention period; (6) any violation of these conditions must be reported promptly to the Commission; and, (7), NASA-KSC will monitor and report on the effect of this waiver on the security of its KSC facility as described in paragraph 12, above.⁴³

14. The foregoing waiver conditions and security procedures for CPN use will serve the policies underlying section 64.1601(b), while allowing KSC to better ensure the safety of its employees. We believe that, under these conditions, the likelihood that CPN information will be disclosed to unauthorized personnel is minimized and, hence, the caller's legitimate expectation of privacy is adequately addressed. Accordingly, we find good cause to grant NASA's petition for limited waiver to the extent described herein.

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and the authority delegated in sections 0.141 and 0.361 of the rules, 47 C.F.R. §§ 0.141, 0.361, the petition for limited waiver of section 64.1601(b) of the Commission's rules, 47 C.F.R. § 64.1601(b), filed by the National Aeronautics and Space Administration, John F. Kennedy Space Center, in CC Docket No. 91-281, IS GRANTED SUBJECT TO THE CONDITIONS DESCRIBED IN PARAGRAPH 13 and as set forth herein.

16. IT IS FURTHER ORDERED that NASA-KSC shall file a report in CC Docket No. 91-281 no later than six and 18 months after the release date of this Order demonstrating whether and how this waiver has enhanced the ability of its security personnel to ensure the safety of its employees.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief
Consumer and Governmental Affairs Bureau

⁴¹ As noted above, the scope of this waiver is limited to the NASA KSC facility and not the agency as a whole.

⁴² Only designated telecommunications and security personnel who have complied with the conditions set forth herein will have access to restricted CPN.

⁴³ We note that these conditions are consistent with those proposed by the petitioner. See *NASA-KSC Petition* at 8.