

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

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

ORDER

Adopted: April 13, 2016

Released: April 13, 2016

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Order, we grant a petition filed by the Enlarged City School District of Middletown, New York¹ 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)² to the called party where a privacy request has been made by the caller.³ 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 telephone calls made to Middletown that threaten the safety of school children and employees, 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.⁴ The Commission concluded 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.⁵ 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

¹ See Petition of Enlarged City School District of Middletown for Waiver of Federal Communications Commission Regulations at 47 CFR § 64.1601(b), dated Feb. 18, 2016 (Middletown Petition).

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 CFR § 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.” *Id.* § 64.1600(j).

³ *Id.* § 64.1601(b).

⁴ 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 CFR § 64.1601(a).

⁵ *Caller ID Order*, 9 FCC Rcd at 1769, para. 34.

services to the public.⁶

3. In adopting this requirement, however, the Commission recognized that unrestricted CPN transmission could intrude upon the privacy interests of calling parties wishing to remain anonymous.⁷ Therefore, the Commission established privacy options to allow callers to restrict the transmission of their telephone numbers.⁸ For example, the Commission's rules require carriers using SS7 to recognize the dialing of *67 as a request that the carrier not pass the calling party's number.⁹ In addition, carriers providing privacy on all calls dialed from a particular line will recognize dialing *82 as a caller's request that the CPN be passed through on an interstate call.¹⁰ Section 64.1601(b) of the Commission's rules 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."¹¹

4. The Commission has found, however, that in certain limited circumstances, the public interest requires CPN transmission despite any countervailing privacy request from the calling party.¹² For example, the Commission concluded 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."¹³ In addition, the Commission has found good cause to grant limited waivers of the CPN privacy options in specific instances where it has been demonstrated that such waivers serve the public interest.¹⁴

⁶ *Id.* at 1766, para. 8.

⁷ *Id.* at 1769, para. 34.

⁸ See 47 CFR § 64.1601(b); see also *Rules and Policies Regarding Calling Number Identification Service – Caller ID*, Memorandum Opinion and Order on Reconsideration, Second Report and Order and Third Notice of Proposed Rulemaking, CC Docket No. 91-281, 10 FCC Rcd 11700, 11728-29, paras. 81-84 (1995) (*Caller ID Reconsideration Order*).

⁹ 47 CFR § 64.1601(b).

¹⁰ See *Caller ID Reconsideration Order*, 10 FCC Rcd at 11728-29, paras. 81-84; see also 47 CFR § 64.1601(b).

¹¹ 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." 47 CFR § 64.1601(b).

¹² See 47 CFR § 64.1601(d).

¹³ *Caller ID Order*, 9 FCC Rcd at 1770, para. 37; see also 47 C.F.R. § 64.1601(d)(4)(ii).

¹⁴ See *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); *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, 27 FCC Rcd 5704 (CGB 2012) (*NASA Order*); *Rules and Policies Regarding Calling Number Identification Service – Caller ID*; *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) (*Hatzalah Order*); *Petition of Liberty Public School District for Waiver of Federal Communications Commission Regulations at 47 C.F.R. § 64.1601(b)*, CC Docket No. 91-281, Memorandum Opinion and Order, 28 FCC Rcd 6412 (CGB 2013) (*Liberty School Waiver Order*).

B. Middletown Petition

5. On February 18, 2016, Middletown filed a petition 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 privacy request. Middletown is a public school district in New York with approximately 7,500 students and 700 employees.¹⁵ Since June 2015, Middletown reports receiving twelve "active shooter and bomb threats" from callers using restricted CPN, triggering lockdown procedures at its schools.¹⁶ Middletown indicates the telecommunications carriers serving it are bound by the CPN privacy rules, and parties placing threatening calls often use the CPN privacy indicator to hinder authorities from identifying them.¹⁷ Middletown argues that reducing the time it takes to identify and apprehend the perpetrators of these threats by providing it with more timely information on which to make safety determinations will better serve the public interest than strict application of the CPN rule.¹⁸

6. Specifically, Middletown argues that a waiver of section 64.1601(b) will serve the public interest by enabling the school district to better protect its students by allowing it to provide a more rapid response to threatening calls.¹⁹ Middletown suggests that special circumstances also warrant a waiver, noting that its school district is a narrow and well-defined public institution, making a waiver predictable, workable, and not subject to discriminatory application.²⁰ In addition, Middletown notes that its situation is virtually identical to that of a school district previously granted a similar waiver due to threatening calls.²¹

7. Middletown further states that, along with a private telecommunications carrier, it provides some of its own telecommunications and security functions, making it possible to ensure that privacy requests remain private when they do not involve a threatening call.²² Middletown states that it would abide by the same conditions imposed when we previously granted similar waivers, including ensuring that CPN of incoming restricted calls will be stored securely and will be accessible only to specific individuals who will keep such information confidential.²³ Middletown indicates that restricted telephone numbers will be deleted after a week unless a threatening event occurs, the restricted CPN will not be passed to the line called and, in the case of threatening calls, will be provided to law enforcement only in secure communications.²⁴

8. On March 2, 2016, the Consumer and Governmental Affairs Bureau released a Public Notice

¹⁵ See Middletown Petition at 3.

¹⁶ *Id.*

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 6.

¹⁹ *Id.* at 9.

²⁰ *Id.* at 12.

²¹ *Id.* (citing *Liberty School Waiver Order*)

²² *Id.* at 13.

²³ *Id.* at 14.

²⁴ *Id.*

seeking comment on the Middletown petition, and has received four comments.²⁵ These commenters unanimously support granting Middletown's request.²⁶ Parents of children that attend the Middletown school note the traumatic nature of school lockdowns necessitated by the threatening calls made to those schools.²⁷ One commenter suggests that the Commission should go beyond granting Middletown's waiver request and amend the CPN rules to include an exemption for any school that receives threatening calls.²⁸

C. Waiver Standard

9. The Commission may waive any of its rules "for good cause shown."²⁹ 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.³⁰ Circumstances that would justify a waiver include "considerations of hardship, equity, or more effective implementation of overall policy."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. Based on our review of the petition and the record, we conclude, subject to certain conditions, that the Middletown petition meets the criteria for granting a limited waiver of section 64.1601(b) and that such waiver would not undermine the privacy objectives of that rule. We find here 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 number, given the conditions we impose to protect that privacy.³³ In other circumstances, we have found a waiver to be appropriate where an institution seeking to receive CPN delivery (notwithstanding the privacy indicator) provides end-office-equivalent communications services as well as security or public-safety functions, has demonstrated a specific threat-based need to respond rapidly to threatening calls, and commits to accessing the information only for that

²⁵ See *Consumer & Governmental Affairs Bureau Seeks Comment on Middletown School District Petition for Waiver of 47 CFR § 64.1601(b) Regarding the Transmission of Calling Party Number*, Public Notice, CC Docket No. 91-281, DA 16-234 (rel. Mar. 2, 2008). See Appendix for a list of commenters.

²⁶ See also Letter from Charles E. Schumer, United States Senate, to Thomas Wheeler, Chairman, FCC, dated March 1, 2016 (indicating that approval of Middletown's waiver "could significantly enhance Middletown's efforts to investigate these alarming threats"); Letter from Kirsten Gillibrand and Sean Patrick Maloney, United States Senate, to Thomas Wheeler, Chairman, FCC, dated March 3, 2016 (indicating that a waiver would "help restore a safe and secure environment for the students and facility of the Middletown School District").

²⁷ See, e.g., Sandra Bell Comments; Gina Grigoli Comments.

²⁸ See E-Rate Comments at 1-2.

²⁹ 47 CFR § 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).

³⁰ *Northeast Cellular*, 897 F.2d at 1166.

³¹ *WAIT Radio*, 418 F.2d at 1159.

³² *Id.* at 1157.

³³ See, e.g., *Caller ID Order*, 9 FCC Rcd at 1770, para. 37; 47 CFR § 64.1601(d). The Commission has found that the disclosure of caller ID information does not violate any privacy rights protected by the U.S. Constitution. *Caller ID Order*, 9 FCC Rcd at 1769, para. 30.

limited purpose.³⁴ We find that Middletown's circumstances are similar to those under which the Commission has previously granted such waivers.³⁵

11. We grant Middletown'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 Middletown will be better able to protect the safety of its 7,500 schoolchildren and 700 employees by reducing the time required to identify and apprehend the perpetrators of threatening phone calls. Middletown reports that within the last year it has received a dozen "active shooter and bomb threats" from callers using restricted CPN, triggering lockdown procedures at its schools.³⁶ Middletown confirms that many of the threatening callers use the CPN restrictions in order to delay authorities from identifying them or their location.³⁷ Middletown states that children are unable to access their medications during multi-hour lockdowns³⁸ and Middletown parents indicate that the impact of these threatening calls that necessitate lockdown procedures have emotionally traumatized many children.³⁹ We agree that the ability to access blocked CPN in these situations enhances the opportunity of security and law enforcement personnel to apprehend such individuals before they can act on their threats.

12. Second, we find that special circumstances warrant a deviation from the general rule. The record indicates that Middletown: (1) is responsible for the safety of a large number of children and employees; (2) receives threatening phone calls that are serious in nature; and (3) provides some of its own security and telecommunications functions. As discussed further below, we condition the approval of this waiver on the implementation of several safeguards consistent with the privacy objectives of the CPN rules to protect the confidentiality of the calling parties.⁴⁰ As a result, the waiver advances public safety while maintaining the privacy interests of the calling party.

13. *Conditions of the Waiver.* The limited waiver granted herein is subject to the following conditions: (1) the CPN on incoming restricted calls to Middletown may not be passed on to the line called;⁴¹ (2) the system used to record CPN shall be operated in a secure way, limiting access to designated telecommunications and security personnel who have signed non-disclosure agreements that acknowledge and commit the individual to comply with Middletown's obligations established herein; (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 Middletown to law enforcement agencies must occur only through secure communications; (5) CPN information must be destroyed in a secure

³⁴ See *supra* n.14.

³⁵ See, e.g., *Liberty School Waiver Order*.

³⁶ Middletown Petition at 3.

³⁷ *Id.* at 5.

³⁸ *Id.* at 4.

³⁹ See Sandra Bell Comments; Gina Grigoli Comments; Connie Quinones; see also Middletown Petition at 4 (noting that students have lost nearly seven percent of their instructional time this school year due to threatening calls).

⁴⁰ Based on the record before us we decline at this time to amend the existing CPN rules, as suggested by E-Rate, to include an exemption for any school that receives threatening calls. See E-Rate Comments at 1-2. Such action is beyond the scope of the petition before us and would generally require notice and comment rulemaking.

⁴¹ Only designated telecommunications and security personnel who have complied with the conditions set forth herein will have access to restricted CPN.

manner after a reasonable retention period; and (6) any violation of these conditions must be reported promptly to the Commission.⁴² We note that these are the same conditions imposed on schools granted similar waivers.⁴³

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

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and (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 CFR § 1.3, and the authority delegated in sections 0.141 and 0.361, 47 CFR §§ 0.141, 0.361, that the petition for limited waiver of section 64.1601(b) of the Commission's rules, 47 CFR § 64.1601(b), filed by the Enlarged City School District of Middletown, New York, in CC Docket No. 91-281, IS GRANTED SUBJECT TO THE CONDITIONS DESCRIBED in paragraph 13 and as set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

Alison Kutler
Chief
Consumer and Governmental Affairs Bureau

⁴² We note that these conditions are consistent with those proposed by the petitioner. *See* Middletown Petition at 14.

⁴³ *See, e.g., Liberty School Waiver Order*, 28 FCC Rcd at 6417, para. 13.

**Appendix
List of Commenters**

Commenter

Sandra Bell
E-Rate Central
Gina Grigoli
Connie Quinones

Abbreviation

Sandra Bell
E-Rate
Gina Grigoli
Connie Quinones