

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

In the Matter of)
)
INSIGHT 100 Petition for Waiver of)
§ 64.1601(b) Regarding the Transmission) CC Docket No. 91-281
of Calling Party Number)

MEMORANDUM OPINION AND ORDER

Adopted: January 4, 2002

Released: January 4, 2002

By the Acting Chief, Network Services Division:

I. INTRODUCTION

1. INSIGHT 100, Inc., has filed a petition requesting a limited waiver of Section 64.1601(b) of the Commission’s rules. Section 64.1601(b) governs the transmission of the calling party number (CPN) by common carriers on the terminating end of a call.¹ INSIGHT 100 requests the waiver to permit certain operators of central office-class equipment to receive CPN on terminating calls as part of the technical capabilities of the equipment. For the reasons stated herein, we grant the petition for a limited waiver.

II. BACKGROUND

2. INSIGHT 100 is a non-profit corporation consisting of educational institutions, hospitals, businesses, and other organizations. INSIGHT 100’s members provide non-public communications to unique, closed groups of users consisting of students, patients and staff on campuses. These entities operate central office (CO) class equipment that function as end-office equivalents for the lines they serve. Like other end office switches, these devices have the ability to capture CPN and privacy indicators transmitted to the switch by the terminating carrier and to block transmission of CPN at the switch if required by the privacy indicator.

3. INSIGHT 100 states that a significant number of its members also share another unique characteristic: they provide extensive residential facilities to students and patients and are responsible for the delivery of emergency response and public safety services within their campuses. In particular, INSIGHT 100 includes a number of state and private universities and many public and private hospitals and medical systems.

4. INSIGHT 100 argues that the ability of its member institutions to perform their security and emergency response duties is severely impaired by their inability to fully use features of their CO-

¹ 47 C.F.R. §64.1601(b).

class devices known as “Customer-Originated Trace” (COT) and system “traps.” COT and traps enable operators of CO-class equipment to determine on a real-time basis the origin of telephone calls processed by the equipment. To use the COT functions, the equipment operator must receive the CPN for calls terminating at their site from the interconnecting carriers. Without access to the CPN, university and hospital emergency response and security forces cannot use COT functions to determine the identity of a caller on a real-time basis. COT functions, therefore, are not available to identify threats to on-campus residents or staff or to dispatch emergency assistance to a caller for whom the university or hospital is responsible.

5. INSIGHT 100 states that common carriers serving its members have refused to pass CPN and privacy indicator data to the members’ switches because, they state, Section 64.1601(b) prohibits them from doing so. Accordingly, INSIGHT 100 seeks a limited waiver on behalf of its members that would permit carriers serving them to pass on CPN and privacy indicator data.² Metrocare opposes certain aspects of INSIGHT 100’s petition, arguing that CPN should be passed on to university or hospital equipment only with requests for emergency assistance. Stanford University replies to Metrocare’s partial opposition, stating that the CO-class equipment used by the subject universities and hospitals would prevent private CPN from being transmitted to called residents.

6. *Section 64.1601(b)*. Section 64.1601(b) states 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.”³ The purpose of this rule is to allow “the calling public to exercis[e] a measure of control over the dissemination of telephone numbers.”⁴ As discussed in the *1994 Caller ID Order*, section 64.1601(b) was established to address concerns raised in the rulemaking proceeding that some individuals making calls would not want their telephone number revealed to a called party for reasons of privacy and personal security.⁵

7. *Waiver Standard*. The Commission may waive any of its rules if the petitioner shows “good cause.”⁶ Waiver may be granted if (1) a waiver would better serve the public interest than would application of the rule; and (2) special circumstances warrant a deviation from the general rule.⁷ Circumstances that would justify a waiver include “considerations of hardship, equity, or more effective

² INSIGHT requests that the waiver be limited to entities that 1) are a hospital or university; 2) provide residential services; 3) have primary responsibility for security on its property; 4) provide telecommunications services using CO-class equipment capable of receiving and interpreting the Privacy Indicator; and 5) comply with the Commission’s rules pertaining to suppression of the CPN. In addition, INSIGHT proposes specific procedures to ensure privacy, including restricting access to call trace logs to designated staff and using physical restrictions, transmitting the logs to law enforcement agencies directly to a printer located on the recipient’s premises, and destroying the call trace logs after a reasonable period of time.

³ 47 C.F.R. § 64.1601(b).

⁴ Rules and Policies Regarding Calling Number Identification Service—Caller ID, CC Docket No. 91-281, *Report and Order and FNPRM*, 9 FCC Rcd 1764, 1769, para. 34 (1994) (*1994 Caller ID Order*).

⁵ *Id.*, *1994 Caller ID Order* at 1769, para. 34.

⁶ 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) (“*WAIT Radio*”); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990) (“*Northeast Cellular*”).

⁷ *Northeast Cellular*, 897 F.2d at 1166. *See also* Comsat Corporation, Petition for Partial Relief from the Current Regulatory Treatment of Comsat World Systems’ Switched Voice, Private Line, and Audio Services, *Order*, 11 FCC Rcd 9622, 9625-9626, para 10 (1996); Petition of General Communications, Inc., for a Partial Waiver of the Bush Earth Station Policy, *Memorandum Opinion and Order*, 11 FCC Rcd 2535, 2536, para. 4 (Int’l Bur. 1996).

implementation of overall policy.”⁸ The waiver must have identifiable standards that are predictable, workable, and not susceptible to discriminatory application.⁹ Generally, the Commission may grant a waiver of its rules only if the relief requested would not undermine the policy objective of the rule in question, and would otherwise serve the public interest.¹⁰

III. DISCUSSION

8. We conclude that INSIGHT 100 meets the standard for waiver of section 64.1601(b), subject to limitations that will protect the privacy and confidentiality of calling parties. The need to insure public safety can, under certain circumstances, take precedence over a caller’s ability to maintain the privacy of his or her telephone number. In particular, the Commission concluded in the *1994 Caller ID Order* 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

9. The limited waiver requested by INSIGHT 100 in this instance satisfies the standard established by the Commission and the courts. First, we agree with INSIGHT 100 that the “public interest” is served by waiving this rule because entities will be better able to protect the health and safety of the persons to whom they provide residential facilities and emergency response services.¹² Further, we agree that deviation from section 64.1601(b) “better serves the public interest” under these special circumstances because (1) the entities qualifying for the waiver would be able to provide rapid and appropriate responses to distress calls and threatening or abusive calls; (2) the entities qualifying for the waiver, not the carriers, are the providers of both the end office equivalent communications service and the public safety functions that are impaired by any delay in obtaining CPN; and (3) the privacy interests of incoming callers are preserved, as entities eligible for this waiver are required to honor the privacy flags of incoming calls, and to implement safeguards to protect the confidentiality of calling party information. Therefore, the requested limited waiver protects both public safety and privacy. Finally, we conclude that because only a narrow and well-defined class of public institutions qualifies for this limited waiver, the standard is predictable and workable. Discriminatory application will thus be avoided. Future parties will be on notice of the precise scope of the waiver and the concrete requirements to be eligible for the waiver.

10. *Scope of the Waiver.* The waiver granted herein is limited to entities that meet the following criteria: (1) the entity is a hospital or a university; (2) the entity provides residential facilities or services within a defined geographic area under the control of the institution; (3) the entity has primary or exclusive responsibility for the emergency response and/or security services provided to residents of the area; (4) the entity provides telecommunications services within the geographic area by operating central office-class equipment that is capable of receiving and properly interpreting the Privacy Indicator, and (5) the entity complies with the Commission’s rules requiring blocking of CPN to the called party when the incoming call is marked “private.”

11. To be eligible for the waiver, entities are specifically prohibited from using CPN for any purpose other than emergency response or security services. Entities who qualify for the waiver are

⁸ *WAIT Radio*, 418 F.2d at 1159.

⁹ *Northeast Cellular*, 897 F.2d at 1166.

¹⁰ *WAIT Radio*, 418 F.2d at 1157; Dominion Video Satellite, Inc., *Order and Authorization*, 14 FCC Rcd 8182, 8184, para. 5 (Int’l Bur. 1999).

¹¹ *1994 Caller ID Order* at 1770, para. 37.

¹² See INSIGHT 100 petition at 3-4.

prohibited from allowing any other party access to CPN, other than legally authorized law enforcement agencies. Moreover, qualifying entities must implement privacy protection measures so that no unauthorized persons gain access to CPN. We require qualifying entities to implement the following procedures to avoid inadvertent or intentional release of CPN to unauthorized persons:

- Access to the electro-magnetic (disk) and physical files that contain call trace logs (including the CPN of incoming callers) must be restricted. Restrictions must include use of a dedicated device to log the call traces, physical restrictions on access to the computer terminals that can view these calling logs, and logical restrictions such as password protection and a limit on the number of designated staff with computer or other access to the call trace logs.
- Staff with access to the call trace logs shall be limited to those who routinely work with the logs and designated management. Designated management may provide to law enforcement or security personnel such CPN information as is necessary to carry out emergency or security functions. All personnel with access to the call trace logs shall be required to enter into non-disclosure agreements regarding CPN information, and shall be subject to penalties such as dismissal from employment and/or monetary penalties for unauthorized disclosure.
- Any lawful requests from law enforcement agencies for print outs of call trace logs must be honored by transmitting the data to a secure printer located at the requesting law enforcement agency.
- Call trace logs must be kept for a reasonable period of time and then destroyed.

12. We conclude that the foregoing waiver limitations and security procedures for CPN will serve the policies underlying section 64.1601(b), while allowing universities and hospitals that have responsibility for the safety of their residents to better meet those obligations. We believe that the likelihood that CPN information will be unlawfully disclosed is minimized, and hence that Metrocare's concerns, as well as callers' legitimate expectations of privacy, are adequately addressed.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, that pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that INSIGHT 100, Inc.'s petition for waiver of section 64.1601(b) of the Commission's rules, 47 C.F.R. § 64.1601(b), IS GRANTED to the extent described in this Order.

14. IT IS FURTHER ORDERED that this Order is effective thirty (30) days from the date of its release.

FEDERAL COMMUNICATIONS COMMISSION

Diane Griffin Harmon
Acting Chief, Network Services Division
Common Carrier Bureau