

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

In the Matter of)	
)	
Data Breach Reporting Requirement)	WC Docket No. 22-21

REPLY COMMENTS OF INCOMPAS

INCOMPAS submits these reply comments in response to the Federal Communications Commission’s (“Commission”) *Notice of Proposed Rulemaking* in WC Docket No. 22-21 seeking comment on the agency’s efforts to update its data breach disclosure requirements.¹

INCOMPAS supports the statutory goals of Section 222, and its member companies—including competitive local exchange carriers (“CLECs”) and new entrants that focus primarily or exclusively on providing communications services to medium-sized and large enterprises, small businesses, local and state governments, including schools and libraries, and non-profits—have gone to great lengths to ensure that, in the provision of voice service, the private, confidential information of their mass market and business customers is protected through careful adherence to the Commission’s rules on customer proprietary network information (“CPNI”).² That said, the NPRM presents a unique opportunity for the Commission to consider recalibrating its CPNI rules to better accommodate those carriers that are providing telecommunications services to business customers. Therefore, INCOMPAS files these reply comments in support of the Voice on the Net Coalition’s recommendation that the Commission

¹ *Data Breach Reporting Requirements*, WC Docket No. 22-21, Notice of Proposed Rulemaking, FCC 22-102 (rel. Jan. 6, 2022) (“*Notice*”).

² 47 U.S.C. § 222.

“adopt an exemption from its privacy and data security rules (codified at 47 CFR 64.2001-64.2011) for enterprise customers of voice service providers who have contracts that specifically address data security and data breaches and provides a mechanism for the customer to communicate with the voice service provider regarding those matters.”³ Our members believe they can address their customers’ privacy-related needs while providing transparency, choice, and security for their business customers.

The Commission’s current CPNI rules apply to both business and mass market voice services. Given that the current CPNI rules were written with mass market consumers in mind, their design is far from optimal for business customers. Telecommunications carriers serving this segment of the market are currently limited in their approaches to compliance with the CPNI rules. The total service approach, for example, hinders the ability of companies to market advanced, IP-based services to business customers. Business customers often negotiate service terms with carriers, including privacy and security terms for the services they are purchasing. The Commission’s CPNI rules do not provide the flexibility for carriers to negotiate such arrangements with their customers. Allowing providers of business services to operate within the plain language of Section 222, or at the very least providing far greater flexibility for carriers to negotiate individualized arrangements with their business customers, will ensure that these carriers meet their statutory obligations to protect customer proprietary information while simultaneously opening up their ability to compete and innovate in the areas of privacy and data security and with respect to other services.

³ Comments of The Voice on the Net Coalition, WC Docket No. 22-21, 1 (filed Feb. 22, 2023) (“VON Coalition Comments”); *see also* Comments of the Information Technology Industry Council, WC Docket No. 22-21, 5 (filed Feb. 22, 2023) (arguing that the “enterprise exemption from the CPNI data breach rules . . . are not eliminated or adversely impacted by the [Congressional Review Act]”) (“ITI Comments”).

Ultimately, this approach will enhance the ability of carriers to serve and meet the needs of their customers. The Commission has previously recognized that business customers are “sophisticated,” and have the capability to ensure that their needs are being met,⁴ and as such, additional flexibility is appropriate in the context of its CPNI rules.⁵ Under the current “business customer exemption,” the Commission has permitted carriers to negotiate individualized authentication regimes with business customers that have an account representative.⁶ Additional flexibility in meeting the Section 222 obligations for business customers should be considered. INCOMPAS supports an approach of protecting enterprise and business customers’ privacy and proprietary information as such customers have the opportunity to negotiate contracts for these services with their telecommunications providers.⁷ INCOMPAS concurs with the VON Coalition that the requirements negotiated in service agreements “will go well beyond the

⁴ *Preserving the Open Internet; Broadband Industry Practices*, Report and Order, 25 FCC Rcd. 17905, 17932 (Dec. 21, 2010), *aff’d in part, vacated and remanded in part sub nom. Verizon v. FCC*, 740 F.3d 623 (D.C. Circ. 2014).

⁵ See *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, 8078, para. 25 (2007) (indicating “that the proprietary information of wireline and wireless business account customers already is subject to stringent safeguards, which are privately negotiated by contract” and that it is unnecessary to extend the carrier authentication rules of CPNI); see also INCOMPAS Ex Parte Notice, WC Docket No. 16-106 at 1-2 (filed Oct. 21, 2016) (explaining that carriers should be allowed to use other reasonable measures developed in consultation with their enterprise customers to meet their core privacy needs).

⁶ See 47 CFR § 64.2010(g).

⁷ INCOMPAS suggests the following language for 47 C.F.R. § 64.2010: “Business Customer Exemption. Telecommunications carriers may bind themselves contractually to privacy and data security regimes other than those described in this subpart for the provision of telecommunications services to enterprise customers if the carrier’s contract with that customer provides a mechanism for the customer to communicate with the carriers about privacy and data security concerns.”

protections afforded individual customers by the CPNI rules, including with the inclusion of specific service level obligations” should service providers fail to meet those obligations.⁸

Moreover, such flexibility will promote a more competitive marketplace where telecommunications carriers can compete to more effectively meet their security and privacy protection needs of business customers. Accordingly, INCOMPAS proposes that the Commission modify its CPNI rules to exempt enterprise and business customers that have the sophistication and opportunity to negotiate for their telecommunications services, while continuing to require carriers serving these customers to comply with the provisions of Section 222.

While the Commission adopted an “enterprise exemption” as part of the *2016 Privacy Order*, INCOMPAS agrees with the proposition submitted by the VON Coalition and ITI that the Congressional Review Act (“CRA”), in this case, would not restrict the Commission from adopting a business customer exemption to the CPNI rules.⁹ The exemption included in the *2016 Privacy Order* was a peripheral issue that was intended to reconcile for enterprise voice services the distinction the Commission had drawn between mass market and business customers in its definition of broadband internet access services (“BIAS”) in the larger context of section 222. At the same time, the exemption signified the Commission’s recognition that voice service providers and “sophisticated” business customers were in the best position to understand and negotiate for their data privacy and security needs. For purposes of the CRA, the Government Accountability Office is required to report on major rules that federal agencies make which must

⁸ VON Coalition Comments at 3.

⁹ See VON Coalition Comments at 4-5; ITI Comments at 5-6.

be submitted to both houses of Congress and the GAO for review before they can take effect.¹⁰ The emphasis of the *2016 Broadband Privacy Order* was on establishing privacy protections for mass market consumers based on the then-recently adopted *Open Internet Order* reclassifying BIAS as a Title II service. The enterprise exemption, as VON notes, “was an unintended victim of the CRA” that would have given voice service providers additional flexibility to meet the data privacy needs of their business customers.¹¹ As such, the Commission should give renewed consideration to its inclusion in the agency’s CPNI rules.

Respectfully submitted,

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¹⁰ Both the VON Coalition and ITI add that the GAO is only required to report on federal agency major rules that have an economic impact of \$100 million or more, and that the business customer exemption at issue does not meet that criteria. *See id.*

¹¹ VON Coalition Comments at 3.