

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

<i>In re</i>)	
)	
CTIA Petition for Rulemaking)	
To Establish Fair Location)	WT Docket No. 01-72
Information Practices)	

COMMENTS OF ELECTRONIC PRIVACY INFORMATION CENTER

These comments are in response to a Commission Public Notice, DA 01-696 (rel. Mar.16, 2001) seeking comment on the Cellular Telecommunications and Internet Association's ("CTIA") Petition for Rulemaking requesting that the Commission initiate a proceeding to establish fair location information practices. *CTIA Petition* (filed Nov. 22, 2000). The Electronic Privacy Information Center ("EPIC") supports the petition and urges the Commission to initiate, and speedily complete, such a rulemaking. EPIC believes that location privacy is one of the most significant issues facing American consumers and that the expeditious establishment of comprehensive, technologically neutral privacy protections would serve the public interest.

EPIC is a non-profit research and educational organization that examines the privacy and civil liberties implications of emerging technologies. As a leading advocate of privacy and consumer rights, EPIC has identified the development of location tracking systems -- and the business models that seek to exploit those capabilities -- as a significant new challenge for policymakers and the public at large. These technologies, which enable the creation of detailed daily itineraries for millions of consumers, have the poten-

tial to fundamentally alter the nature and use of wireless communications systems. While there are likely to be some location-based services that will appeal to many consumers, there are likely to be many others that will be perceived as invasive and undesirable. For that reason, EPIC believes it is critical that consumers be able to maintain meaningful control over the collection and use of location data, as Congress recognized when it enacted the Wireless Communications and Public Safety Act of 1999 ("WCPSA").¹

Two points raised in the CTIA petition are of particular importance. First, EPIC agrees with CTIA's suggestion that the Commission should commence a separate proceeding to address location privacy issues, apart from the Commission's pending proceeding on customer proprietary network information ("CPNI").² Location issues involve technologies, players and policy considerations that are different than those involved in the protection and regulation of traditional forms of CPNI. Industry perspectives are also likely to diverge; cellular providers appear to support the "express authorization" (or "opt-in") approach embodied in the WCPSA,³ while the BOCs have traditionally advocated an "opt-out" approach to the collection and use of CPNI.⁴

¹ Pub. L. 108-81, 113 Stat. at 1288 (1999).

² See *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-115, 13 FCC Rcd 8061 (1998).

³ See *CTIA Petition* at 9-10.

⁴ See *U.S. West v. FCC*, 182 F.3d 1224 (10th Cir. 1999), *cert. denied*, 147 L. Ed. 2d 248, 120 S. Ct. 2215 (2000).

Second, EPIC concurs with CTIA's contention that the rules governing the collection and use of location data must be "technology neutral."⁵ The devices and services that will make use of location data will be varied and complex, ranging from hand-held personal digital assistants ("PDAs"), such as a Palm Pilot or a Blackberry, to automotive navigational systems. From the consumer's perspective, the only common denominator among these devices and systems will be the desire to retain control over the collection and use of location information. The average user is unlikely to know (or care) that a cellular phone is subject to one regulatory regime while a wireless Internet device is subject to another (or none at all).

For that reason, and to ensure that location privacy protections are, indeed, technology neutral, the Commission should specifically seek comment on whether any provider intends to offer or is developing technology that will collect location information as defined under the Act, but are not regulated as a commercial mobile services under the Act. *See* 47 U.S.C. § 153(27), 47 C.F.R. § 20.9. The Commission should seek comment on extending similar privacy regulation to any such business, and its authority to impose such regulation. Further, EPIC encourages the Commission to consider making legislative recommendations to Congress in the event that it concludes that its jurisdictional authority does not extend to providers who do not meet the definition of "commercial mobile service" to ensure that location data is treated uniformly by all service providers, re-

⁵ *See* CTIA Petition at 11.

ardless of the particular technology employed.

Respectfully Submitted,

Cheryl A. Leanza

Andrew Jay Schwartzman

Harold J. Feld

David Sobel

General Counsel
Electronic Privacy Information Center
118 Connecticut Avenue, NW
Suite 200
Washington, DC 20009
(202) 483-1140

Media Access Project
950 18th St., NW
Suite 220
Washington, DC 20006
(202)-232-4300
Counsel for EPIC

April 6, 2001