

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

In the Matter of
Rules and Policies Regarding Calling Number
Identification Service – Caller ID
Waiver of Federal Communications Commission
Regulations at 47 C.F.R. § 64.1601(b) on Behalf
of Jewish Community Centers
CC Docket No. 91-281

TEMPORARY WAIVER ORDER

Adopted: March 3, 2017

Released: March 3, 2017

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Order, we grant to Jewish Community Centers (JCCs)1 and any carriers that serve JCCs an emergency 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 Pending further proceedings on the Public Notice described below, we conclude that there is good cause to grant such a waiver on an emergency basis due to a large number of recent bomb-threat calls targeting these facilities and substantial disruption and fear caused as a result. We find that waiving this rule, under the conditions specified herein, will serve the public interest by ensuring that security and law enforcement personnel are not hindered by section 64.1601(b) of our rules in their ability to investigate and respond to telephone threats. We seek comment separately on whether to extend this waiver on a more permanent basis.4

1 We grant this waiver to covered JCCs to the extent they would otherwise be subject to the limitations specified in 47 CFR § 64.1601(b). The current record is insufficient for us to adopt a specific definition of a “Jewish Community Center” on a permanent basis. For purposes of this order, we will consider eligible for this emergency waiver any entity that operates as a Jewish Community Center or its close equivalent, including any entity that is a member of the JCC Association of North America located in the United States. We believe this approach provides flexibility to ensure that facilities that have been targeted in recent months by threatening callers are afforded the benefits of this waiver until a more complete record can be developed.

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 Consumer and Governmental Affairs Bureau Seeks Comment on Waiver Regarding Access to Calling Party Numbers Associated with Threatening Phone Calls Made to Jewish Community Centers, CC Docket No. 91-281, Public Notice (DA 17-222) (rel. Mar. 3, 2017).

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.⁵ 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.⁶ 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.⁷

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.⁸ Therefore, the Commission established privacy options to allow callers to restrict the transmission of their telephone numbers.⁹ 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.¹⁰ 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.¹¹ 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."¹²

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.¹³ 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."¹⁴ In addition, the Consumer and Governmental Affairs Bureau has found good cause to grant limited waivers of the CPN privacy options in specific instances where it has been

⁵ 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).

⁶ *Caller ID Order*, 9 FCC Rcd at 1769, para. 34.

⁷ *Id.* at 1766, para. 8.

⁸ *Id.* at 1769, para. 34.

⁹ 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*).

¹⁰ 47 CFR § 64.1601(b).

¹¹ See *Caller ID Reconsideration Order*, 10 FCC Rcd at 11728-29, paras. 81-84; see also 47 CFR § 64.1601(b).

¹² 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).

¹³ See 47 CFR § 64.1601(d).

¹⁴ *Caller ID Order*, 9 FCC Rcd at 1770, para. 37; see also 47 CFR § 64.1601(d)(4)(ii).

demonstrated that such waivers serve the public interest.¹⁵ For example, the Bureau has waived the rule in response to school districts that had received bomb threats and committed to ensure that access to CPNs would be very limited notwithstanding a waiver.¹⁶

B. The Schumer Letter

5. On February 28, 2017, Senator Charles E. Schumer submitted a letter to Chairman Ajit Pai expressing concern regarding recent bomb threats made via phone against various JCCs in New York and across the nation.¹⁷ Specifically, Senator Schumer indicates that there have been 69 such incidents involving 54 JCCs in 27 different states since the beginning of 2017.¹⁸ The most recent threats (which as of the date of the Schumer letter occurred on February 27, 2017) constituted “the fifth wave of threats in the past two months.” According to information provided by Senator Schumer, these threatening calls have “traumatized the Jewish community and struck fear in homes across the country,” including, in many cases, “preschoolers, their families, and those who care for them.” As Senator Schumer notes, these threats also harm public resources by, for example, “requiring the deployment of bomb squads and other SWAT equipment.” Senator Schumer notes that the Commission has played a valuable role in assisting other entities that have received similar threatening calls in the past by granting waivers to assist in tracking perpetrators who hid behind blocked numbers.¹⁹ He indicates that taking similar measures may be useful in this instance to ensure that law enforcement personnel have the resources to investigate and thwart attacks, and he seeks consideration of that option.²⁰

¹⁵ 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 CFR § 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 CFR § 64.1601(b)*, CC Docket No. 91-281, Memorandum Opinion and Order, 28 FCC Rcd 6412 (CGB 2013) (*Liberty School Waiver Order*); *Rules and Policies Regarding Calling Number Identification Service – Caller ID*, *Petition of Enlarged City School District of Middletown for Waiver of Federal Communications Commission Regulations at 47 CFR 64.1601(b)*, CC Docket No. 91-281, Order, 31 FCC Rcd 3565 (CGB 2016) (*Middletown Waiver*).

¹⁶ See, e.g., *Middletown Waiver*, 31 FCC Rcd at 3567-58, paras. 5-8; *Liberty Waiver*, 28 FCC Rcd at 6414-15, paras. 5-6.

¹⁷ See Letter from Senator Charles E. Schumer to Chairman Ajit Pai, FCC, dated Feb. 28, 2017 (Schumer Letter).

¹⁸ *Id.* at 1.

¹⁹ *Id.* (citing *Middletown Waiver* granting a waiver of section 64.1601(b) of the Commission’s rules to a school district that had received a number of threatening calls).

²⁰ Schumer Letter at 2.

C. Waiver Standard

6. The Commission may waive any of its rules “for good cause shown.”²¹ 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.²² Circumstances that would justify a waiver include “considerations of hardship, equity, or more effective implementation of overall policy.”²³ 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.²⁴

III. DISCUSSION

7. Based on our review of Senator Schumer’s letter and the large numbers of recent threats phoned in to the JCCs, we conclude, subject to certain conditions, that good cause exists to grant a temporary emergency waiver of section 64.1601(b) to JCCs and the carriers who serve them for disclosure of CPN associated with allegedly threatening calls to JCCs.²⁵ Specifically, we find that the recent phone threats documented in the Schumer letter and in public press reports pose a new, grave, and immediate danger to the “safety of life and property”²⁶ of a specific category of call recipients (JCCs), and that the public interest would be served by a tailored waiver that both will help JCCs and local law enforcement address the threats in real time while also continuing to protect the privacy of lawful callers. We extend this waiver to the telecommunications carriers that serve the JCCs because JCCs may not have their own switches that would allow them to capture the restricted CPN. We find here specific circumstances where the need to ensure public safety in accordance with the Commission’s statutory mission takes precedence over a caller’s interest in maintaining the privacy of his or her telephone number when that number is associated with the origination of a call making such clear threats of unlawful action.²⁷ In other circumstances, we have found a waiver to be appropriate where an institution has demonstrated a specific threat-based need to respond rapidly to similar calls, and commits to accessing the information only for that limited purpose.²⁸ We find that circumstances in this instance are similar to those under which the Commission has previously granted such waivers.²⁹

8. As a result, we grant a limited waiver subject to the conditions discussed herein. First, we conclude that a temporary limited waiver of section 64.1601(b) serves the public interest in this instance because a waiver will help ensure that JCCs and law enforcement are not hindered by section 64.1601(b)

²¹ 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).

²² *Northeast Cellular*, 897 F.2d at 1166.

²³ *WAIT Radio*, 418 F.2d at 1159.

²⁴ *Id.* at 1157.

²⁵ *See* Schumer Letter at 1.

²⁶ 47 U.S.C. § 151.

²⁷ *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.

²⁸ *See supra* n.15.

²⁹ *See, e.g., Liberty School Waiver Order*.

in obtaining and using CPN to identify callers that attempt to block their telephone numbers when making threatening calls.³⁰ In such circumstance, the public interest served is obvious and substantial in promoting efforts to identify and thwart individuals making such threats.

9. Second, we find that special circumstances warrant a deviation from the general rule. The record indicates that JCCs: (1) provide services and facilities for a large community including a number of children and; (2) have received numerous threatening phone calls that are serious in nature in just the last two months.³¹ 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. As a result, the waiver advances public safety while maintaining the privacy interests of the calling party. This emergency waiver shall remain in place until such time as we issue a ruling, following notice and comment, on whether to extend, amend, or revoke such waiver on a permanent basis.

10. *Conditions of the Waiver.* The limited waiver granted herein is subject to the following conditions: (1) the CPN on incoming restricted calls to JCCs may not be passed on to the line called;³² (2) any system used to record CPN obtained as a result of this waiver shall be operated in a secure way, limiting access to designated telecommunications and security personnel; (3) telecommunications and security personnel, including JCC personnel who may obtain access to restricted CPN via this waiver, may access restricted CPN data only when investigating phone calls of a threatening and serious nature (i.e., in which the calling party makes a bomb threat or a similarly serious and imminent threat to property, life, or health), and shall document that access as part of the investigative report; (4) transmission of restricted CPN information from JCC to law enforcement agencies must occur only through secure communications; (5) CPN information must be destroyed in a secure manner after a reasonable retention period; and (6) any violation of these conditions must be reported promptly to the Commission. We note that these are similar conditions to those imposed on others granted waivers.³³

11. The foregoing waiver conditions and security procedures for CPN use will serve the policies underlying section 64.1601(b), while allowing JCCs to better ensure the safety of those that utilize its facilities. 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 JCCs a limited waiver to the extent described above.

IV. ORDERING CLAUSES

12. 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 a temporary waiver

³⁰ We also note that in connection with the statutory protection of customer proprietary network information, section 222(d)(2) of the Communications Act, 47 U.S.C. § 222(d)(2), provides that "Nothing in this section prohibits a telecommunications carrier from using, disclosing, or permitting access to customer proprietary network information obtained from its customers, either directly or indirectly through its agents ... to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services."

³¹ See, e.g., Schumer Letter at 1.

³² Only designated telecommunications and security personnel who have complied with the conditions set forth herein will have access to restricted CPN.

³³ See, e.g., *Liberty School Waiver Order*, 28 FCC Rcd at 6417, para. 13.

of section 64.1601(b) of the Commission's rules, 47 CFR § 64.1601(b), IS GRANTED to Jewish Community Centers and the carriers that serve them SUBJECT TO THE CONDITIONS DESCRIBED as set forth herein. This temporary waiver shall remain in effect until the Commission determines whether the waiver should be made permanent in the proceeding initiated today by separate Public Notice.

FEDERAL COMMUNICATIONS COMMISSION

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