

Alternate Compliance Program provisions of 46 CFR part 8.

(b) For the purposes of this section, a list of authorized classification societies, including information for ordering copies of approved classification society rules and supplements, is available from Commandant (G-MSE), 2100 Second St., SW., Washington, DC 20593-0001; telephone (202) 267-6925; or fax (202) 267-4816. Approved classification society rules and supplements are incorporated by reference into 46 CFR 8.110(b).

Dated: August 1, 2001.

**Paul J. Pluta,**

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01-26563 Filed 10-22-01; 8:45 am]

BILLING CODE 4910-15-U

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CC Docket No. 96-115; CC Docket No. 96-149; FCC 01-247]

#### Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards

**AGENCY:** Federal Communications Commission.

**ACTION:** Clarification.

**SUMMARY:** This document is intended to clarify the status of the Commission's CPNI rules after the Tenth Circuit's opinion and explains how parties may obtain customer consent for use of their CPNI.

#### FOR FURTHER INFORMATION CONTACT:

Marcy Greene, Attorney Advisor, Policy and Program Planning Division, Common Carrier Bureau, (202) 418-2410.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Clarification Order in CC Docket Nos. 96-115 and 96-149, FCC 01-247, adopted August 28, 2001, and released September 7, 2001. The complete text of this Clarification Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-

863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com). It is also available on the Commission's website at <http://www.fcc.gov>.

#### Synopsis of the Clarification Order

1. In the *Customer Proprietary Network Information (CPNI) Order* (63 FR 20364, April 24, 1998), the Commission stated that section 222(c)(1) of the Act allows a carrier to use, without the customer's prior approval, the customer's CPNI derived from the complete service that the customer subscribes to from that carrier and its affiliates, for marketing purposes within the existing service relationship. This is known as the "total service approach." The Commission also concluded that carriers must notify the customer of the customer's rights under section 222 and then obtain express written, oral or electronic customer approval—a "notice and opt-in" approach—before a carrier may use CPNI to market services outside the customer's existing service relationship with that carrier. US West appealed this order to the Tenth Circuit. On August 16, 1999, the Commission adopted the *CPNI Reconsideration Order* (64 FR 53242, October 1, 1999) in response to a number of petitions for reconsideration, forbearance, and clarification of the *CPNI Order*. The *CPNI Reconsideration Order*, among other things, further clarified the total service approach. It also retained the opt-in approach.

2. After the Commission adopted the *CPNI Reconsideration Order*, the Tenth Circuit issued its decision in *US WEST v. FCC*, vacating a portion of the *CPNI Order* "and the regulations adopted therein." In *US WEST v. FCC*, US WEST contended that the opt-in approach for customer approval in the *CPNI Order* violated the First and Fifth Amendments of the Constitution. The Tenth Circuit first questioned whether the government had demonstrated that the interests it put forward in regulating CPNI—protecting customer privacy and fostering competition—are substantial. The court agreed that the government had asserted a substantial interest in protecting customers' privacy, but declined to find that promoting competition was a significant consideration in Congress' enactment of section 222. The court nonetheless concluded that the government did not demonstrate that the CPNI regulations requiring opt-in customer approval "directly and materially advanc[ed] its interests in protecting privacy and promoting competition." The court concluded that the Commission's determination that an opt-in requirement would best protect a

consumer's privacy interests was not narrowly tailored as required by the First Amendment because the Commission had failed to adequately consider an opt-out option.

#### Effect of the US WEST Decision on the CPNI Rules

3. The court's opinion in *US WEST v. FCC* analyzed only the constitutionality of the Commission's interpretation of the customer approval requirement of section 222(c)(1) of the Act by enacting the opt-in regime discussed above. As the Commission has found previously, the court's vacatur order related only to the discrete portions of the *CPNI Order* and rules requiring opt-in customer approval. Had the court intended to take the unusual step of vacating portions of the order and rules not before it, the Commission believes it would have said so explicitly. Accordingly, we conclude that the court sought to eliminate only the specific section of our rules that was before it, and that its vacatur order applied only to § 64.2007(c), the only provision inextricably tied to the opt-in mechanism. The remainder of the Commission's CPNI rules remain in effect.

Federal Communications Commission.

**Magalie Roman Salas,**

Secretary.

[FR Doc. 01-26579 Filed 10-22-01; 8:45 am]

BILLING CODE 6712-01-P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**48 CFR Parts 1804, 1807, 1808, 1815, 1816, 1817, 1819, 1822, 1832, 1835, 1836, 1837, 1842, 1843, 1844, and 1852**

#### Miscellaneous Administrative Revisions to the NASA FAR Supplement

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This is a final rule to conform the NASA FAR Supplement with the FAR as a result of changes made by FAC's 97-20, 97-22 and 97-26, and make editorial and miscellaneous changes dealing with NASA internal and administrative matters.

**EFFECTIVE DATE:** October 23, 2001.

#### FOR FURTHER INFORMATION CONTACT:

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**SUPPLEMENTARY INFORMATION:**