

§ 64.5108

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(3) A TRS provider must maintain records of approval, whether oral, written, electronic, or sign language, during the time period that the approval or disapproval is in effect and for at least one year thereafter.

(b) *Use of opt-in and opt-out approval processes.* (1) Opt-in approval requires that the TRS provider obtain from the customer affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided appropriate notification of the TRS provider's request consistent with the requirements set forth in this subpart.

(2) With opt-out approval, a customer is deemed to have consented to the use, disclosure, or access to the customer's CPNI if the customer has failed to object thereto within the waiting period described in § 64.5108(d)(1) of this subpart after the TRS provider has provided to the customer appropriate notification of the TRS provider's request for consent consistent with the rules in this subpart.

(3) A TRS provider may only use, disclose, or permit access to the customer's individually identifiable CPNI with the customer's opt-in approval, except as follows:

(i) Where a TRS provider is permitted to use, disclose, or permit access to CPNI without customer approval under § 64.5105 of this subpart.

(ii) Where a TRS provider is permitted to use, disclose, or permit access to CPNI by making use of customer opt-in or opt-out approval under paragraph (4) of this section.

(4) A TRS provider may make use of customer opt-in or opt-out approval to take the following actions with respect to CPNI:

(i) Use its customer's individually identifiable CPNI for the purpose of lawfully marketing TRS-related services to that customer.

(ii) Disclose its customer's individually identifiable CPNI to its agents and its affiliates that provide TRS-related services for the purpose of lawfully marketing TRS-related services to that customer. A TRS provider may also permit such persons or entities to obtain access to such CPNI for such purposes.

EFFECTIVE DATE NOTE: At 78 FR 40613, July 5, 2013, § 64.5107 was added. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 64.5108 Notice required for use of customer proprietary network information.

(a) *Notification, generally.* (1) Prior to any solicitation for customer approval to use, disclose, or permit access to CPNI, a TRS provider shall provide notification to the customer of the customer's right to deny or restrict use of, disclosure of, and access to that customer's CPNI.

(2) A TRS provider shall maintain records of notification, whether oral, written, electronic, or sign language, during the time period that the approval is in effect and for at least one year thereafter.

(b) *Individual notice.* A TRS provider shall provide individual notice to customers when soliciting approval to use, disclose, or permit access to customers' CPNI.

(c) *Content of notice.* Customer notification shall provide sufficient information in clear and unambiguous language to enable the customer to make an informed decision as to whether to permit a TRS provider to use, disclose, or permit access to, the customer's CPNI.

(1) The notification shall state that the customer has a right to deny any TRS provider the right to use, disclose or permit access to the customer's CPNI, and the TRS provider has a duty, under federal law, to honor the customer's right and to protect the confidentiality of CPNI.

(2) The notification shall specify the types of information that constitute CPNI and the specific entities that will use, receive or have access to the CPNI, describe the purposes for which CPNI will be used, and inform the customer of his or her right to disapprove those uses, and deny or withdraw the customer's consent to use, disclose, or permit access to access to CPNI at any time.

(3) The notification shall advise the customer of the precise steps the customer must take in order to grant or deny use, disclosure, or access to CPNI.

and must clearly state that customer denial of approval will not affect the TRS provider's provision of any services to the customer. However, TRS providers may provide a brief statement, in clear and neutral language, describing consequences directly resulting from the lack of access to CPNI.

(4) TRS providers shall provide the notification in a manner that is accessible to the customer, comprehensible, and not misleading.

(5) If the TRS provider provides written notification to the customer, the notice shall be clearly legible, use sufficiently large type, and be placed in an area so as to be readily apparent to a customer.

(6) If any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.

(7) A TRS provider may state in the notification that the customer's approval to use CPNI may enhance the TRS provider's ability to offer products and services tailored to the customer's needs. A TRS provider also may state in the notification that it may be compelled to disclose CPNI to any person upon affirmative written request by the customer.

(8) The notification shall state that any approval or denial of approval for the use of CPNI outside of the service for which the TRS provider is the default provider for the customer is valid until the customer affirmatively revokes or limits such approval or denial.

(9) A TRS provider's solicitation for approval to use, disclose, or have access to the customer's CPNI must be proximate to the notification of a customer's CPNI rights to non-disclosure.

(d) *Notice requirements specific to opt-out.* A TRS provider shall provide notification to obtain opt-out approval through electronic or written methods, but not by oral or sign language communication (except as provided in paragraph (f) of this section). The contents of any such notification shall comply with the requirements of paragraph (c) of this section.

(1) TRS providers shall wait a 30-day minimum period of time after giving customers notice and an opportunity to opt-out before assuming customer

approval to use, disclose, or permit access to CPNI. A TRS provider may, in its discretion, provide for a longer period. TRS providers shall notify customers as to the applicable waiting period for a response before approval is assumed.

(i) In the case of an electronic form of notification, the waiting period shall begin to run from the date on which the notification was sent; and

(ii) In the case of notification by mail, the waiting period shall begin to run on the third day following the date that the notification was mailed.

(2) TRS providers using the opt-out mechanism shall provide notices to their customers every two years.

(3) TRS providers that use email to provide opt-out notices shall comply with the following requirements in addition to the requirements generally applicable to notification:

(i) TRS providers shall obtain express, verifiable, prior approval from consumers to send notices via email regarding their service in general, or CPNI in particular;

(ii) TRS providers shall either:

(A) Allow customers to reply directly to the email containing the CPNI notice in order to opt-out; or

(B) Include within the email containing the CPNI notice a conspicuous link to a Web page that provides to the customer a readily usable opt-out mechanism;

(iii) Opt-out email notices that are returned to the TRS provider as undeliverable shall be sent to the customer in another form before the TRS provider may consider the customer to have received notice;

(iv) TRS providers that use email to send CPNI notices shall ensure that the subject line of the message clearly and accurately identifies the subject matter of the email; and

(v) TRS providers shall make available to every customer a method to opt-out that is of no additional cost to the customer and that is available 24 hours a day, seven days a week. TRS providers may satisfy this requirement through a combination of methods, so long as all customers have the ability to opt-out at no cost and are able to effectuate that choice whenever they choose.

(e) *Notice requirements specific to opt-in.* A TRS provider may provide notification to obtain opt-in approval through oral, sign language, written, or electronic methods. The contents of any such notification shall comply with the requirements of paragraph (c) of this section.

(f) *Notice requirements specific to one-time use of CPNI.* (1) TRS providers may use oral, text, or sign language notice to obtain limited, one-time use of CPNI for inbound and outbound customer telephone, TRS, or point-to-point contacts for the duration of the call, regardless of whether TRS providers use opt-out or opt-in approval based on the nature of the contact.

(2) The contents of any such notification shall comply with the requirements of paragraph (c) of this section, except that TRS providers may omit any of the following notice provisions if not relevant to the limited use for which the TRS provider seeks CPNI:

(i) TRS providers need not advise customers that if they have opted-out previously, no action is needed to maintain the opt-out election;

(ii) TRS providers need not advise customers that the TRS provider may share CPNI with the TRS provider's affiliates or third parties and need not name those entities, if the limited CPNI usage will not result in use by, or disclosure to, an affiliate or third party;

(iii) TRS providers need not disclose the means by which a customer can deny or withdraw future access to CPNI, so long as the TRS provider explains to customers that the scope of the approval the TRS provider seeks is limited to one-time use; and

(iv) TRS providers may omit disclosure of the precise steps a customer must take in order to grant or deny access to CPNI, as long as the TRS provider clearly communicates that the customer can deny access to his or her CPNI for the call.

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§ 64.5109 Safeguards required for use of customer proprietary network information.

(a) TRS providers shall implement a system by which the status of a customer's CPNI approval can be clearly established prior to the use of CPNI. Except as provided for in §§ 64.5105 and 64.5108(f) of this subpart, TRS providers shall provide access to and shall require all personnel, including any agents, contractors, and subcontractors, who have contact with customers to verify the status of a customer's CPNI approval before using, disclosing, or permitting access to the customer's CPNI.

(b) TRS providers shall train their personnel, including any agents, contractors, and subcontractors, as to when they are and are not authorized to use CPNI, including procedures for verification of the status of a customer's CPNI approval. TRS providers shall have an express disciplinary process in place, including in the case of agents, contractors, and subcontractors, a right to cancel the applicable contract(s) or otherwise take disciplinary action.

(c) TRS providers shall maintain a record, electronically or in some other manner, of their own and their affiliates' sales and marketing campaigns that use their customers' CPNI. All TRS providers shall maintain a record of all instances where CPNI was disclosed or provided to third parties, or where third parties were allowed access to CPNI. The record shall include a description of each campaign, the specific CPNI that was used in the campaign, including the customer's name, and what products and services were offered as a part of the campaign. TRS providers shall retain the record for a minimum of three years.

(d) TRS providers shall establish a supervisory review process regarding TRS provider compliance with the rules in this subpart for outbound marketing situations and maintain records of TRS provider compliance for a minimum period of three years. Sales personnel must obtain supervisory approval of any proposed outbound marketing request for customer approval.

(e) A TRS provider shall have an officer, as an agent of the TRS provider,