

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

In the Matter of
Protecting Consumers from SIM Swap and Port-Out Fraud
WC Docket No. 21-341

ORDER

Adopted: July 5, 2024

Released: July 5, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Federal Communications Commission’s (Commission) Wireline Competition Bureau (Bureau) grants in part and denies in part the petition for limited waiver or other relief submitted by CTIA, Competitive Carriers Association, and NCTA – The Internet & Television Association (jointly, Petitioners).1 Petitioners request that the Commission temporarily waive or suspend enforcement of all of the new rules adopted in the SIM Swap and Port-Out Fraud Order2 until the later of (1) March 10, 2025 or (2) after the Office of Management and Budget (OMB) completes review of any information collection requirements associated with the Order under the Paperwork Reduction Act (PRA).3

2. For the reasons discussed below, we find that waiver of the Commission’s rules until March 10, 2025 would not serve the public interest, and accordingly deny the request. We find, however, that good cause exists to waive compliance with the rules adopted in the SIM Swap and Port-Out Fraud Order that are not subject to OMB review until the effective date of the rules that are subject to OMB approval. This will effectively result in a single synchronized timeframe: compliance with the rules in their entirety, including those not subject to the PRA, will not be required until OMB completes review of the information collection requirements associated with the Order, and the Commission publishes a notice in the Federal Register announcing the compliance date.

II. BACKGROUND

3. On November 15, 2023, the Commission adopted the SIM Swap and Port-Out Fraud Order to provide greater protections to customers from SIM swap and port-out fraud.4 Specifically, the

1 See CTIA, Competitive Carriers Association, and NCTA – The Internet & Television Association, Joint Petition for Limited Waiver or Other Relief, WC Docket No. 21-341 (filed Jun. 26, 2024) (Petition).

2 Protecting Consumers from SIM Swap and Port-Out Fraud, WC Docket No. 21-341, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-95 (Nov. 15, 2023) (SIM Swap and Port-Out Fraud Order).

3 See Petition at 1-2.

4 See SIM Swap and Port-Out Fraud Order at 2, para. 2. A subscriber identity module (SIM) facilitates the proper routing of texts and calls to a customer’s cell phone, so long as the SIM associated with the customer’s phone number is assigned to the customer’s phone. SIM swap fraud is a scam in which a bad actor convinces a victim’s wireless provider to transfer the victim’s mobile service and number from the victim’s cell phone to a cell phone in the bad actor’s possession. Port-out fraud involves a bad actor, posing as the victim, opening an account with a wireless provider other than the victim’s current provider, and then arranging for the victim’s phone number to be transferred (or “ported out”) to the account with the new wireless provider controlled by the bad actor. See id. at 2, para. 1.

Commission revised its Customer Proprietary Network Information (CPNI) and Local Number Portability (LNP) rules to require wireless providers to adopt secure methods of authenticating a customer before redirecting a customer's phone number to a new device or provider.⁵ The Commission also adopted additional rules to reinforce that requirement, including that wireless providers adopt processes for responding to failed authentication attempts,⁶ institute employee training for handling SIM swap and port-out fraud,⁷ and establish safeguards to prevent employees who interact with customers from accessing CPNI until after customers have been authenticated.⁸ In addition, the Commission adopted rules that will enable customers to act to prevent and address fraudulent SIM changes and number ports, including requiring that wireless providers notify customers regarding SIM change and port-out requests,⁹ offer customers the option to lock their accounts to block processing of SIM changes and number ports,¹⁰ and give advanced notice of available account protection mechanisms.¹¹ The Commission further established requirements to minimize the harms of SIM swap and port-out fraud when it occurs, including requiring wireless providers to maintain a clear process for customers to report fraud, promptly investigate and remediate fraud, and promptly provide customers with documentation of fraud involving their accounts.¹² Finally, to ensure wireless providers track the effectiveness of authentication measures used for SIM change requests, the Commission required that they keep records of SIM change requests and the authentication measures they use.¹³

4. The *SIM Swap and Port-Out Fraud Order* required wireless providers to comply with the requirements six months after the effective date of the *Report and Order* or, for those requirements subject to review by OMB, upon completion of that review, whichever is later.¹⁴ The Order was published in the Federal Register on December 8, 2023, with an effective date of January 8, 2024, which then results in a compliance date of July 8, 2024 for rules not subject to the PRA.¹⁵ The final rules adopted by the Commission, codified at sections 52.37 and 64.2010(h) of the Commission's rules, each contain provisions expressly delaying the respective compliance deadlines until OMB approves the new

⁵ See *SIM Swap and Port-Out Fraud Order* at 16-21 & 35-37, paras. 26-30 & 54-57.

⁶ *Id.* at 21-23, paras. 31-34.

⁷ *Id.* at 43-44, paras. 69-71.

⁸ *Id.* at 31-33, paras. 50-51.

⁹ *Id.* at 23-27 & 37-39, paras. 35-40 & 58-60.

¹⁰ *Id.* at 27-40 & 39-41, paras. 41-45 & 61-64.

¹¹ *Id.* at 42-43, paras. 67-68.

¹² *Id.* at 44-47, paras. 72-77.

¹³ *Id.* at 30-31, paras. 46-49.

¹⁴ *Id.* at 48-49, para. 83.

¹⁵ 88 Fed. Reg. 85794 (Dec. 8, 2023). The Commission stated that "this *Report and Order* SHALL BE EFFECTIVE 30 days after publication in the Federal Register, and that compliance with the rules adopted herein shall be required six months after the effective date of the *Report and Order*, except that the amendments to sections 52.37(c), 52.37(d), 52.37(e), 52.37(g), 64.2010(h)(2), 64.2010(h)(3), 64.2010(h)(4), 64.2010(h)(5), 64.2010(h)(6), and 64.2010(h)(8) of the Commission's rules, 47 CFR §§ 52.37(c), 52.37(d), 52.37(e), 52.37(g), 64.2010(h)(2), 64.2010(h)(3), 64.2010(h)(4), 64.2010(h)(5), 64.2010(h)(6), and 64.2010(h)(8), which may contain new or modified information collection requirements, will not become effective until the later of i) six months after the effective date of this *Report and Order*; or ii) after the Office of Management and Budget completes review of any information collection requirements associated with this *Report and Order* that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act. The Commission directs the Wireline Competition Bureau to announce the compliance date for sections 52.37(c), 52.37(d), 52.37(e), 52.37(g), 64.2010(h)(2), 64.2010(h)(3), 64.2010(h)(4), 64.2010(h)(5), 64.2010(h)(6), and 64.2010(h)(8) by subsequent Public Notice and to cause 47 CFR § 52.37 and § 64.2010 to be revised accordingly." *SIM Swap and Port-Out Fraud Order* at 62, para. 121.

rules. Specifically, the rules state that compliance with “this section [52.37]” will not be required until this paragraph is removed or contains a compliance date, which will not occur until the later of:” i) July 8, 2024; or “ii) after the Office of Management and Budget completes review of any information collection requirements in this section that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act or the Wireline Competition Bureau determines that such review is not required.”¹⁶

5. In setting the timeframe, the Commission concluded that providing six months to achieve compliance with rules that are not subject to OMB review “accounts for the urgency of safeguarding customers from these fraudulent schemes, and will allow wireless providers to coordinate any updates needed to their systems and processes to comply with the Safe Connections Act and the rules” adopted to implement that statute.¹⁷ The Commission went on to explain that “SIM swap and port-out fraud can result in substantial harm to the customer, including loss of service on their devices. Fraudulent SIM swaps and port-outs allow bad actors to perpetrate greater fraud by giving them the means to complete text and voice authentications to access the victim’s other accounts, and as such, we find that an aggressive implementation timeframe is appropriate to provide these important consumer protections without substantial delay.”¹⁸ The Commission also found the implementation timeframe to be consistent with other proceedings and regulatory frameworks adopted by the Commission where consumer protection and numbering requirements were at issue.¹⁹

6. Petitioners assert that “certain operational realities have made it clear that significantly more time is necessary for providers to develop fully tested, comprehensive compliance solutions,” and that “uncertainty surrounding when compliance will be required has created additional challenges.”²⁰ As such, Petitioners request that the Commission either temporarily waive or suspend enforcement of all of the new SIM swap and numbering porting rules until the later of (1) March 10, 2025, or (2) after OMB completes review of any information collection requirements associated with the Order under the PRA.²¹

¹⁶ See *SIM Swap and Port-Out Fraud Order*, Appx A, § 52.37(h). Similarly, regarding the revisions to the CPNI rules pertaining to protections to SIM swap fraud in 64.2010(h), the Commission rules state that “Compliance with paragraph (h) will not be required until this subparagraph is removed or contains a compliance date, which will not occur until the later of:” i) July 8, 2024; or ii) after the Office of Management and Budget completes review of any information collection requirements in paragraph (h) that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act or the Wireline Competition Bureau determines that such review is not required. *See id.*, Appx. A, § 64.2010(h)(9).

¹⁷ *SIM Swap and Port-Out Fraud Order* at 49, para. 83. Compliance with the line separation requirements adopted by the Commission in the *Safe Connections Act Report and Order* is required by July 15, 2024. *Wireline Competition Bureau Announces Compliance Date of July 15, 2024 for Safe Connections Act Rules*, WC Docket Nos. 22-238, 11-42, 21-450, Public Notice, DA 24-503 (WCB May 29, 2024) (citing *Supporting Survivors of Domestic and Sexual Violence et al.*, WC Docket No. 22-238 et al., Report and Order, FCC 23-96 (2023) (*Safe Connections Act Report and Order*)).

¹⁸ *Id.*

¹⁹ *Id.* at 50, para. 83 (citing *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information, et al.*, CC Docket Nos. 96-115 et al., 22 FCC Rcd 6927, 6958, para. 61 (2007) (*2007 CPNI Order*) (concluding that six months was sufficient for carriers to implement the revised CPNI rules to address pretext (except for certain small carriers) “in light of the importance of this issue to the public interest”); *Telephone Number Requirements for IP-Enabled Services Providers et al.*, WC Docket No. 07-243 et al., Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking 22 FCC Rcd 19531, 19552, 19557, paras. 40, 48 (2007) (concluding that 90 days was sufficient time for carriers to comply with LNP validation requirements and requiring interconnected VoIP providers and their numbering partners to comply with LNP obligations 30 days after Federal Register publication, subject to OMB review and approval)).

²⁰ Petition at 3-4.

²¹ *Id.* at 4. Petitioners also request this relief “on an expedited basis and at a minimum before July 8, 2024.” *Id.*

III. DISCUSSION

7. A provision of the Commission’s rules “may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”²² The Commission may find good cause to extend a waiver, “if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”²³ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁴ We conclude that the petitioners failed to demonstrate that a temporary waiver of the rules until March 10, 2025 is in the public interest.²⁵ Accordingly, we deny that component of the Petitioners’ request. However, we find that there is good cause, and that it would be in the public interest, to waive the July 8, 2024 compliance date for the rules that are not subject to OMB review until the effective date of the rules that are subject to OMB review. This will allow wireless providers to comply with all of the rules in their entirety, including those specifically subject to PRA and those that would otherwise go into effect on July 8, 2024, under a single synchronized timeframe, and we grant Petitioners’ request to such an extent.

8. Petitioners assert that granting the requested relief would serve the public interest by affording covered wireless providers “sufficient time to make the complex technical and process changes necessary to implement the new rules, ensuring that the systems they adopt can be designed and tested to maximize consumer benefit and avoid the risks of rushed implementation.”²⁶ Petitioners also assert that granting their petition “will provide certainty to covered providers by establishing a clear date for providers to target for comprehensive compliance.”²⁷ Petitioners argue that a temporary waiver will not adversely impact consumers, “who can rely on the robust, effective anti-fraud program that covered providers will operate while they are working to implement the new rules.”²⁸ Finally, Petitioners assert that a uniform extended timeframe applicable to *all* rules is “consistent with the Commission’s obligation to abide by the plain text of its codified regulations” and “preferable as a matter of policy given the close relationship between authentication and training requirements and the other new rules.”²⁹

9. We disagree with Petitioners that a temporary waiver of compliance with the rules until March 10, 2025 would be in the public interest. The Commission is not unaware of the complexities of implementing the requirements adopted in the *SIM Swap and Port-Out Order* and has previously considered Petitioners’ concerns about the complexity of updating their systems; it concluded that “providing six months after the effective date of the *Report and Order* to implement these revisions to our CPNI and number porting rules strikes the right balance between time for wireless providers to implement these changes and accounting for the urgency of safeguarding customers from these fraudulent

²² 47 CFR § 1.3.

²³ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972)).

²⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²⁵ See 47 CFR § 1.3; *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁶ Petition at 7-10 (asserting that “many of the new rules require completely new systems and processes,” that existing systems and processes cannot be easily replicated to all customers and contexts without significant planning, development, integration with other systems, and testing, and that implementation of the new rules will impact 30 to nearly 100 applications, systems, or platforms, including those operated by outside vendors); *see also id.* at 11-13 (arguing that additional time will result in “better, more effective anti-fraud programs,” will allow providers to better balance anti-fraud measures will timely accommodating valid SIM change and number port requests; and will mitigate risks associated with rushed implementation, including detecting security issues and operationalizing the overlap with the new rules implementing the Safe Connections Act).

²⁷ *Id.* at 7, 15-16.

²⁸ *Id.* at 7, 14-15.

²⁹ *Id.* at 17-18.

schemes.”³⁰ We do not find the complexities outlined by Petitioners persuasive to overcome the Commission’s stated concerns regarding the urgency of addressing these types of pernicious fraudulent schemes. The Commission also acknowledged industry’s concerns that implementing these new rules will be a multistep process for many providers,³¹ but noted that providers themselves acknowledged the necessity of implementing revisions to the CPNI and LNP rules concurrently with the rules implementing the Safe Connections Act, given how both frameworks address many of the same actions (e.g., account locks, customer notifications, customer authentication).³² The *SIM Swap and Port-Out Fraud Order* recognized that some providers already employ authentication and notification measures but that additional work would be needed.³³ Contrary to the Petitioners’ claim that the Commission underestimated the work associated with implementing the new rules,³⁴ it in fact cited to the same steps that Petitioners state they are currently undertaking, including design, development, and testing of expanded IT systems and platforms.³⁵ It found that accomplishing this work and achieving compliance under an “aggressive implementation timeframe is appropriate to provide substantial consumer protections without delay.”³⁶ Even with this urgency, we also observe that Petitioners will have significantly more time than what may have been initially anticipated to work through implementation complications pertaining to the rules subject to the PRA—Petitioners have had over seven months since the release of the *SIM Swap and Port-Out Order* to work on implementing the requirements adopted therein, even before the information collection review process has begun.

10. While we are sympathetic to Petitioners’ assertions for a need for the Commission to set a date certain for compliance, the timeframes for the OMB’s review under the Paperwork Reduction Act are publicly-available and presumably well-known to Petitioners.³⁷ Since the initial 60-day PRA public comment period commenced on June 25, 2024,³⁸ and is the first of two PRA public comment periods, wireless providers can reasonably assume that the new rules would be under OMB review for six-to-nine months, and that OMB approval would come, at the earliest, in late November 2024.³⁹ Wireless providers could conservatively use this date as a date certain from which to base their implementation and testing of systems to implement the requirements of the *SIM Swap and Port-Out Fraud Order*. This timeframe will ultimately provide wireless providers with at least a full 12 months from adoption of the rules to implement them, a sufficient timeframe in line with, or exceeding, other items requiring implementation

³⁰ *SIM Swap and Port-Out Order* at 50, para. 83.

³¹ See, e.g., Letter from CTIA to Marlene Dortch, Secretary, FCC, WC Docket No. 21-341, at 2-3 (filed Nov. 8, 2023).

³² *SIM Swap and Port-Out Fraud Order* at 50, para. 83. The line separation requirements under the *Safe Connections Act Report and Order*, which involve CPNI and LNP obligations, become effective on July 15, 2024. See *supra* note 17.

³³ *Id.* at 49-50, para. 83.

³⁴ Petition at 8.

³⁵ Petition at 8-9.

³⁶ *SIM Swap and Port-Out Fraud Order* at 49, para. 83 and n.304.

³⁷ See <https://pra.digital.gov> (explaining that the Office of Management and Budget’s review of rules subject to the Paperwork Reduction Act typically takes 6-9 months, which includes, at a minimum, 60 days for public comment published in the Federal Register, a second 30-day public comment period published in the Federal Register, and an additional 60 days for OMB review and approval).

³⁸ Fed. Commc’ns Comm’n, *Information Collections Being Reviewed by the Federal Communications Commission*, 89 Fed. Reg. 53079, 53080 (June 25, 2024) (requiring written PRA comments to be submitted on or before August 26, 2024).

³⁹ Since the initial public comment period began June 25, 2024, calculating, at a minimum, 60 days for public comment, 30 days for a second public comment period, and 60 days for OMB review and approval would result in OMB completing its review at the earliest, 150 days from June 25, 2024, or in late November.

of revised or new CPNI requirements.⁴⁰ Further, Petitioners' own request would result in an unknown compliance date, as they request March 10, 2025 or upon OMB approval, *whichever is later*.⁴¹ Were OMB to complete its review of these rules after March 10, the compliance date would be no more certain than the Commission's established timeframe. Given the strong public interest considerations in protecting consumers from these types of fraud, we believe it warrants a more cautious approach to extending the timeframe.

11. Petitioners arguments that a waiver would not adversely impact consumers because consumers can rely on existing fraud-prevention programs also fall short. Had the Commission determined that providers' existing anti-fraud programs were sufficient, it arguably would not have found that new, comprehensive rules were necessary in the *SIM Swap and Port-Out Fraud Order*.

12. We do find, however, that good cause exists, and that it would be in the public interest, to waive compliance with the rules adopted in the *SIM Swap and Port-Out Fraud Order* that are not subject to OMB review (e.g., authentication requirements and training requirements on how to use new systems), which are substantively tied to requirements subject to the PRA, until the effective date of the rules that are subject to OMB approval. This will effectively result in a single synchronized timeframe for all the rules in their entirety, including those that do not implicate the PRA. Petitioners have demonstrated that allowing providers to come into compliance with all of the rules on the same schedule "will ensure harmonious implementation and avoid unnecessary burdens."⁴² We therefore grant Petitioners' limited request to waive compliance with the rules adopted in the *SIM Swap and Port-Out Fraud Order* that are not subject to OMB review until after OMB completes its review of the information collection requirements under the PRA, and the Commission publishes notice of OMB's approval in the Federal Register. We encourage Petitioners to keep the Commission apprised as to their progress in implementing the rules adopted in the *SIM Swap and Port-Out Order*.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to Sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, the Joint Petition for Limited Waiver or Other Relief filed by CTIA, Competitive Carriers Association, and NCTA – The Internet & Television Association filed on June 26, 2024 is DENIED IN PART and GRANTED IN PART to the extent described herein.

⁴⁰ See *2007 CPNI Order* (released April 2, 2007, received OMB approval December 2007); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information* et al., CC Docket No. 96-115 et al., Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860 (2002) (*Third CPNI Order*) (released July 25, 2002, received OMB approval Feb. 24, 2003).

⁴¹ Petition at 2, 21.

⁴² See Petition at 20 (explaining that the "authentication requirements in Sections 52.37 and 64.2010(h) are not easily disentangled from the remainder of the rules, several of which govern actions that must be taken when authentication succeeds or fails," and that "as providers work to operationalize the other requirements[,] . . . the authentication procedures may need to be adjusted accordingly"); see also *id.* (asserting that "[a]dopting new training programs for employees in the short term on new procedures that have not been implemented and will change in the medium-term risks creating employee and customer confusion on the availability and status of new security tools and processes").

14. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
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