

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

July 9, 2018

To: Subcommittee on Communications and Technology Democratic Members and Staff
Fr: Committee on Energy and Commerce Democratic Staff
Re: Hearing on “Protecting Customer Proprietary Network Information in the Internet Age”

On **Wednesday, July 11, 2018 at 10:15 in room 2322 of the Rayburn House Office Building**, the Subcommittee on Communications and Technology will hold a hearing titled “Protecting Customer Proprietary Network Information in the Internet Age.”

I. BACKGROUND

A recent survey conducted by the Pew Research Center found that 91 percent of adults agree or strongly agree that consumers have lost control of how personal information is collected and used by companies.¹ This certainly is not a new trend or set of concerns. More than a decade ago, 88 percent of consumers said in a Consumer Reports poll that keeping personal information safe and secure online was very important.²

II. PRIVACY OF CONSUMER CALL DATA

In 1996, Congress enacted protections covering certain customer data generated and collected by telecommunications providers in the course of providing telecommunications service.

¹ Lee Rainie, *The State of Privacy in America: What We Learned*, Pew Research Center (Jan. 20 1016).

² See Princeton Survey Research Associates International, *Leap of Faith: Using the Internet Despite The Dangers Results of a National Survey of Internet Users for Consumer Reports WebWatch*, Consumer Reports (Oct. 26, 2005).

Section 222 of the Communications Act protects customer network proprietary information (“CPNI”), such as customer account data (including a customer’s account number) and call detail information (such as telephone numbers called by the customer or telephone numbers from which the customer received an incoming call, the time and duration of any incoming or outgoing calls, and the location of the caller and call recipient).³

The statute has been amended over the years to define “customer propriety network information” in major part as “information that relates to the quantity, technical configuration, type, destination, location and amount of use of a telecommunications service.” Absent permission from the customer, providers are prohibited from using, disclosing or permitting access to customers’ CPNI for any purpose other than what is necessary to provide the telecommunications service.⁴ Except as specifically permitted by rule (e.g., marketing of communications-related services and fraud prevention), providers may only use, disclose or permit access to customer CPNI subject to opt-in approval.⁵ Congress excludes “subscriber list information,” which is defined separately in another subsection of 222, from being defined or construed as a subset of CPNI.⁶

Congress also placed a statutory duty on carriers to protect the confidentiality of customers’ proprietary information.⁷ The term “proprietary information” is not defined in the statute,⁸ though in a 2014 enforcement action, the Federal Communications Commission (FCC) took the position that “proprietary information” includes a broader scope of information than CPNI, such as customers’ social security numbers.⁹

Importantly, the privacy protections in Section 222 apply only to CPNI data that is collected by telecommunications carriers. Non-telecommunications carriers collecting such data are subject to Federal Trade Commission (FTC) jurisdiction.

³ 47 U.S.C. §222(h).

⁴ 47 U.S.C. § 222(c).

⁵ See 47 C.F.R. 64.2007.

⁶ See note 3.

⁷ 47 U.S.C. § 222(a)(“Every telecommunications carrier has a duty to protect the confidentiality of *proprietary information* of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.”)(emphasis added).

⁸ But see note 3.

⁹ Federal Communications Commission, *TerraCom, Inc. and YourTel America, Inc.*, Notice of Apparent Liability, FCC 14-173 (Oct. 24, 2014), Order and Consent Decree, DA 15-776 (July 9, 2015). See also Federal Communications Commission, *AT&T Services, Inc.*, Order and Consent Decree, DA 15-399 (Apr. 8, 2015).

III. BROADBAND PRIVACY

In 2016, the FCC updated its rules extending Section 222's privacy protections to broadband internet access service and harmonizing the protections for voice and broadband service.¹⁰ The rules required service providers to be more transparent about the data they collect and share, gave consumers greater choice in how their information could be used and shared, and placed greater responsibility on service providers to secure consumers' data.¹¹ On March 28, 2018, the House voted 215-205 to pass S.J. Res. 34, the Senate companion to Chairman Blackburn's Congressional Review Act resolution, which repealed the rules and limits the FCC's authority to promulgate similar rules absent congressional action.¹²

As a result, the FCC's previous CPNI rules, which remain in effect for telecommunications carriers, have taken on greater prominence in protecting consumers.¹³ Further, the FTC is able to exercise its authority under Section 5 of the FTC Act to take action against a non-common carrier for unfair or deceptive acts and practices.

IV. WITNESSES

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¹⁰ Federal Communications Commission, *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Report and Order, Federal Communications Commission, WC Docket No. 16-106 (Nov. 2, 2016).

¹¹ *Id.*

¹² Pub. L. No. 115-22 (2017).

¹³ Federal Communications Commission, *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Order, WC Docket No. 16-106 (June 29, 2017).