

April 24, 2017

Ajit Pai, Chairman  
Mignon Clyburn, Commissioner  
Michael O’Rielly, Commissioner  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Dear Chairman Pai, Commissioner Clyburn, and Commissioner O’Rielly,

More than a year and half ago, a coalition of civil society organizations, legal scholars, technology experts, and EPIC filed a petition with the FCC asking the Commission to repeal a regulation that requires telephone companies to retain the detailed call records of their customers.<sup>1</sup> We explained that the regulation was unduly burdensome and ineffectual and posed an ongoing threat to the privacy and security of American consumers.

We write now to urge the FCC to act immediately on the petition and to end the data retention mandate.

The FCC’s outdated data retention mandate puts customer privacy at risk while also placing an unnecessary regulatory burden on carriers. The rule states:

Each carrier that offers or bills toll telephone service shall retain for a period of 18 months such records as are necessary to provide the following billing information about telephone toll calls: the name, address, and telephone number of the caller, telephone number called, date, time and length of the call. Each carrier shall retain this information for toll calls that it bills whether it is billing its own toll service customers for toll calls or billing customers for another carrier.<sup>2</sup>

As our petition explains, the rule violates customers’ privacy rights by requiring carriers to retain sensitive information about millions of Americans who are under no suspicion of wrongdoing. A requirement to unnecessarily maintain sensitive data also increases the likelihood of that data being exposed in a security breach. Such a breach was reported in November 2015, three months after the coalition filed its petition, when it was revealed that 70 million prisoner call records had been exposed in a data breach.<sup>3</sup> In another recent breach announcement, a Verizon employee was accused in September 2016 of selling private call records.<sup>4</sup>

---

<sup>1</sup> EPIC, Petition to Repeal 47 C.F.R. § 42.6 (“Retention of Telephone Records”) (Aug. 4, 2015), <https://epic.org/privacy/fcc-data-retention-petition.pdf>.

<sup>2</sup> FCC Retention of Telephone Toll Records, 47 C.F.R. § 42.6.

<sup>3</sup> Jordan Smith & Micah Lee, *Not So Securus*, The Intercept (Nov. 11, 2015), <https://theintercept.com/2015/11/11/securus-hack-prison-phone-company-exposes-thousands-of-calls-lawyers-and-clients/>.

<sup>4</sup> Jeff Martin, *Ex-Verizon Worker Accused of Selling Customer Phone Records*, Associated Press (Sep. 26, 2016), <http://bigstory.ap.org/article/f6d75215f08f4d7284a00568a5549366/ex-verizon-worker-accused-selling-customer-phone-records>.

The data retention rule no longer serves a useful purpose. Carriers have all but abandoned per-call billing in favor of bundled and flat-rate service plans.<sup>5</sup> The rule’s reliance on an outdated billing model increases costs, stifles innovation, and inhibits market competition by preventing carriers from competing on privacy.

Commissioner O’Rielly recently wrote that “rules can live on long past their usefulness.”<sup>6</sup> The White House has issued executive orders calling for the review of regulations to eliminate those that are “outdated, unnecessary, or ineffective.”<sup>7</sup> The data retention rule certainly meets these criteria, and it should be repealed.

Under its own rules, the FCC must issue a Public Notice “promptly” after a petition for rulemaking has been filed.<sup>8</sup> Inaction for a year and eight months is beyond any reasonable definition of “prompt.”

The time has come to give the public the opportunity to comment on whether the data retention mandate should continue. We therefore ask the Commission to docket the petition and issue a Public Notice for comment within two weeks, by May 8, 2017.

Sincerely,

Access Now  
American-Arab Discrimination (ADC)  
American Library Association  
Benton Foundation  
Campaign for Liberty  
Center for Digital Democracy  
Center for Democracy & Technology  
Center for Media Justice  
Citizens for Health  
Citizen Outreach  
Competitive Enterprise Institute  
Constitutional Alliance  
Consumer Action  
Consumer Watchdog  
Consumers Union  
Council on American-Islamic Relations  
Cyber Privacy Project  
Defending Rights & Dissent

---

<sup>5</sup> Dept. of Justice and Homeland Security, Comment Letter on Notice of Rulemaking In the Matter of Implementation of the Telecommunications Act of 1996, at 10 (Apr. 28, 2006), CC Docket No. 96-115.

<sup>6</sup> Michael O’Rielly, *Taking Stock of FCC Paperwork*, FCC (Mar. 3, 2017, 4:15 PM), <https://www.fcc.gov/news-events/blog/2017/03/03/taking-stock-fcc-paperwork-burdens>.

<sup>7</sup> Exec. Order No. 13,777, 82 Fed. Reg. 12,285, 12,286 (Mar. 1, 2017).

<sup>8</sup> 47 C.F.R. § 1.403 (“All petitions for rule making . . . meeting the requirements of §1.401 will be given a file number and, promptly thereafter, a “Public Notice” will be issued . . . as to the petition, file number, nature of the proposal, and date of filing.”).

DownsizeDC.org, Inc.  
Electronic Frontier Foundation  
Electronic Privacy Information Center (EPIC)  
Fight for the Future  
Government Accountability Project  
International Association of Whistleblowers  
Liberty Coalition  
Niskanen Center  
Online Trust Alliance  
OpenTheGovernment.org  
Patient Privacy Rights  
PEN American Center  
Privacy Rights Clearinghouse  
Privacy Times  
R Street Institute  
Restore the Fourth  
The Rutherford Institute  
TechFreedom  
U.S. Public Interest Research Group (PIRG)  
World Privacy Forum