

July 10, 2018

The Honorable Marsha Blackburn, Chairman
The Honorable Michael Doyle, Ranking Member
House Committee on Energy and Commerce
Subcommittee on Communications and Technology
2322 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Blackburn and Ranking Member Doyle:

We write to you regarding the upcoming hearing on “Protecting Customer Proprietary Network Information in the Internet Age.”¹ Congress should amend Section 222 so that the rules protecting customer proprietary network information² (“CPNI”) apply regardless of whether is held by telecommunications providers or by other companies.

The Electronic Privacy Information Center (“EPIC”) is a public interest research center established in 1994 to focus public attention on emerging privacy and civil liberties issues.³ For more than twenty years, EPIC has worked to ensure that the FCC protects the privacy of American consumers.⁴ EPIC has advocated for the protection CPNI since the provision was enacted in the Telecommunications Act. EPIC filed the original 2005 petition urging the FCC to increase its CPNI privacy protections.⁵ EPIC also advocated for uniform privacy standards for both telecommunications and information service providers in the 2016 Privacy Order.⁶

Congress should amend Section 222 of the Communications Act so that the CPNI rules apply to “advanced communications services” in addition to “telecommunications services.” The statute’s definition of “advanced communications services” includes “(A) interconnected VoIP service; (B) non-interconnected VoIP service; (C) electronic messaging service; and (D) interoperable

¹ *Protecting Customer Proprietary Network Information in the Internet Age*, 115th Cong. (2018), H. Comm. on Energy and Commerce, Subcomm. on Communications and Technology (July 11, 2018), <https://energycommerce.house.gov/hearings/protecting-customer-proprietary-network-information-in-the-internet-age/>.

² EPIC, CPNI (Customer Proprietary Network Information), <https://epic.org/privacy/cpni/>.

³ See EPIC, *About EPIC*, <https://epic.org/epic/about.html>.

⁴ See EPIC, *US West v. FCC – The Privacy of Telephone Records*, <https://epic.org/privacy/litigation/uswest/> (1997) (describing the efforts of EPIC and others to defend the FCC’s customer proprietary network information rules). See also EPIC *Amicus brief, NCTA v. FCC*, 555 F.3d 996 (D.C. Cir. 2009) (defending the FCC’s CPNI privacy rules).

⁵ EPIC, In the Matter of Implementation of the Telecommunications Act of 1996: Petition for Rulemaking to Enhance Security and Authentication Standards for Access to Customer Proprietary Network Information, CC Docket No. 96-115 (Aug. 30, 2005), <https://epic.org/privacy/iei/cpnipet.html>.

⁶ Reply Comments of EPIC, In the Matter of Protecting the Privacy of Customers of Broadband and Other Telecommunications Services, WC Docket No. 16-106 (July 6, 2016), <https://epic.org/apa/comments/EPIC-FCC-Privacy-NPRM-Reply-Comments-07.06.16.pdf>.

videoconferencing service.”⁷ This would give the FCC jurisdiction over third-party app providers that consumers are increasingly relying on. This simple change would make the statute’s CPNI rules apply uniformly, closing the current loophole that allows apps like WhatsApp and Google Voice to evade CPNI privacy rules.

The exception for “subscriber list information” has outlived its purpose and should be eliminated. As the memo points out, it was created because telephone books were common, and was “not an indication that names and addresses are not a type of information deserving of protection.”⁸ Telephone books were distributed in a geographical area, the idea being that you could look up a local business or acquaintance easily. Data brokers have access to that same information but without geographic limitations or other constraints. The rationale for this exception is no longer compelling, and the statute should be updated to reflect the sensitivity of “subscriber list information.”

CPNI rules should apply to both Internet service providers and edge providers. Chairman Blackburn criticized the FCC for treating the two differently, saying “[t]he government should not pick winners and losers when it comes to the privacy of Americans.”⁹ EPIC agrees that it does not make sense to treat companies differently when they are collecting the same information and pose the same threat to privacy. Consumers should have their information protected regardless of whether they make a call over telecommunications networks or using apps that bypass those networks. Information regulated as CPNI when it is held by a telecommunications provider should also be regulated as CPNI when it is held by an edge provider company.

We ask that this letter be entered in the hearing record. EPIC looks forward to working with the Subcommittee on these and other issues impacting the privacy of American consumers.

Sincerely,

/s/ Marc Rotenberg

Marc Rotenberg
EPIC President

/s/ Christine Bannan

Christine Bannan
EPIC Administrative Law and Policy Fellow

⁷ 47 U.S.C. § 153(1).

⁸ Committee Majority Staff Memo, Hearing entitled “Protecting Customer Network Proprietary Information in the Internet Age” at 4 (July 9, 2018), <https://docs.house.gov/meetings/IF/IF16/20180711/108523/HHRG-115-IF16-20180711-SD002-U2.pdf>.

⁹ Rep. Marsha Blackburn, *Blackburn introduces bill to protect online privacy*, Press Release (May 19, 2017), <https://blackburn.house.gov/news/documentsingle.aspx?DocumentID=398295>.