



November 15, 2013

Chairman Tom Wheeler
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

1718 Connecticut Ave NW

Suite 200

Washington DC 20009

USA

+1 202 483 1140 [tel]

+1 202 483 1248 [fax]

www.epic.org

Re: NARUC's Draft Resolution on Communications Privacy and AT&T Selling Private Call Detail Information

Dear Chairman Wheeler:

We are writing to supplement our June 11, 2013 letter to then Acting Chair Clyburn regarding news reports that Verizon, one of the largest domestic phone companies subject to the Commission's regulations, unlawfully disclosed call detail information to the National Security Agency ("NSA").¹ At that time we expressed concern that the FCC needed to do more to protect the privacy of American telephone customers, and we set out the legal basis for action by the agency. Since we submitted our letter, the National Association of Regulatory Utility Commissioners ("NARUC") has issued a draft resolution recognizing the significant communications privacy issues arising from NSA domestic surveillance.² Additionally, *The New York Times* has reported recently that AT&T, a major telecommunications carrier under the Commission's jurisdiction, has disclosed customer proprietary network information ("CPNI") to federal and local law enforcement and intelligence agencies, including the Drug Enforcement Administration ("DEA") and Central Intelligence Agency ("CIA").

NARUC's draft resolution states in part:

[i]t is now apparent that public expectations of privacy and confidentiality held for decades by totally innocent private citizens were not only open to compromise by certain network providers but the information was turned over to agencies of the Federal government without any attempt whatsoever to dispute the legitimacy of the requests, and . . . those same network providers turned the disclosure of such private information into a profit center [.]³

In recognizing telecommunications providers' recent unlawful CPNI disclosures and the crucial role of the FCC in protecting consumer information, NARUC's draft resolution recommends

[t]hat the FCC, under the authority granted to it in Section 706 of the Telecommunications Act of 1996, require any provider unwilling to make at least a good faith effort to protect any and all customers of its services from unadjudicated, unilateral attacks on their privacy in a duly constituted court of law be required to disclose to all

¹ Letter from Elec. Info. Ctr. to Mignon Clyburn, Acting Chair, Fed. Commc'n Comm'n (June 11, 2013), available at <http://epic.org/privacy/terrorism/fisa/EPIC-FCC-re-Verizon.pdf>.

² Nat'l Ass'n of Regulatory Util. Comm'r [NARUC], *TC-3 Resolution Calling for, at a Minimum, Disclosure of Provider Actions Facilitating Governmental Surveillance and Retention of Private and Personal Communications via Traditional (PSTN), Wireless and/or Internet Protocol (IP) Networks*, at 26, Draft Res. (Nov. 5, 2013), available at <http://annual.narucmeetings.org/13-1108-1124am-vz-Resolution-Packet.pdf>.

³ *Id.* at 28.

customers that said customers should have no expectation of privacy, and further that the provider cannot guarantee that agencies of the Federal government will be prevented from hacking into providers' systems to obtain customers' data, call and/or text records, Internet data, voice communications, correspondence and materials maintained by those providers on behalf of their customers engaged in the use of social media and maintained by those providers on behalf of their customers; and that said disclosure shall be made to all customers in plain language by written communication in at least 12 point type not less than semiannually.⁴

NARUC's draft resolution and recent news reports underscore the importance of the FCC's role in upholding and enforcing the privacy provisions of the Telecommunications Act of 1996. Remarkably, telephone companies now subject to tariffs by the Commission are receiving revenue by providing customer data to law enforcement agencies.

In September 2013, *The New York Times* reported on the Hemisphere Project, a program in which AT&T sells CPNI to federal and local drug enforcement agents.⁵ Massive in scope, the Hemisphere database collects four billion call records daily, which include "every call that passes through an AT&T switch – not just those made by AT&T customers . . ."⁶ AT&T grants government officials access to CPNI pursuant to administrative subpoenas, which are issued by the DEA and are not subject to judicial oversight.⁷

And last week, *The New York Times* reported that AT&T sells CPNI to the CIA.⁸ According to the report, "[t]he C.I.A. supplies phone numbers of overseas terrorism suspects, and AT&T searches its database and provides records of calls that may help identify foreign associates [.]"⁹ AT&T is not under a court order or subpoena to disclose CPNI to the CIA.¹⁰

AT&T's actions violate Section 222 of the Telecommunications Act of 1996, which mandates that telecommunications carriers, such as AT&T, protect CPNI.¹¹ And there is no question that the FCC has authority to investigate this matter.

We write to reiterate our call for an investigation into Verizon's unlawful disclosure of call detail information to the NSA, and we urge you to open an investigation into AT&T's decision to turn over call records to the DEA, CIA, and local officials without legal authority.

We have attached a copy of our June 11, 2013 letter for your review. We look forward to hearing from you or your staff as soon as possible regarding the actions the FCC intends to take.

⁴ *Id.* at 29.

⁵ Scott Shane and Colin Moynihan, *Drug Agents Use Vast Phone Trove, Eclipsing N.S.A.'s*, N.Y. TIMES, Sept. 1, 2013, at A1, available at http://www.nytimes.com/2013/09/02/us/drug-agents-use-vast-phone-trove-eclipsing-nsas.html?pagewanted=1&_r=1.

⁶ *Id.*

⁷ *Id.*

⁸ Charlie Savage, *C.I.A. Is Said to Pay AT&T for Call Data*, N. Y. TIMES, Nov. 7, 2013, at A1, available at <http://www.nytimes.com/2013/11/07/us/cia-is-said-to-pay-att-for-call-data.html?pagewanted=1>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Telecommunications Act of 1996, 47 U.S.C. § 222 *et seq.*

Sincerely,

/s/ Marc Rotenberg

Marc Rotenberg
EPIC Executive Director

/s/ Khaliah Barnes

Khaliah Barnes
EPIC Administrative Law Counsel

Enclosures:

EPIC's June 11, 2013 letter;

NARUC's Draft TC-3 Resolution Calling for, at a Minimum, Disclosure of Provider Actions Facilitating Government Surveillance and Retention of Private and Personal Communications via Traditional (PSTN), Wireless and/or Internet Protocol (IP) Networks