

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of)
)
Implementation of the)
Telecommunications Act of 1996:)
)
Telecommunications Carriers' Use)
of Customer Proprietary Network)
Information and Other)
Customer Information)

CC Docket No. 96-115

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TO: The Commission

COMMENTS OF NEW YORK STATE ASSEMBLYMAN
ANTHONY J. GENOVESI

Assemblyman Anthony J. Genovesi

Legislative Office Building
Room 456
Albany, New York 12248-0001

DATE: June 10, 1996

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SUMMARY

The Commission should use this proceeding to give a comprehensive, clear explanation of what privacy rules now exist for all telecommunications carriers. The Telecommunications Act of 1996 created some privacy rules, but the scope of those rules is less than clear. The Commission's expertise would be of great assistance in resolving several important questions. What privacy rules apply uniformly, across-the-board to all telecommunications carriers? What other privacy rules apply to particular segments of the telecommunications industry, but not to other segments of the industry? What privacy rules will govern telecommunications technologies and services that are only now being developed? The Commission would perform a valuable service to consumers, the industry and other interested parties, by providing a clear picture of what the rules of the road for telecommunications privacy are.

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COMMENTS OF NEW YORK STATE ASSEMBLYMAN

ANTHONY J. GENOVESI

I. INTRODUCTION

1. I am filing these comments in response to the Commission's Notice of Proposed Rulemaking in the matter captioned above. I am a Member of the New York State Assembly and Chairman of the Assembly's Committee on Oversight, Analysis and Investigation.

2. I have a long-standing interest in privacy matters, in general, and in telecommunications privacy, in particular. In 1994, I introduced in the New York State Assembly a Telecommunications Privacy Bill that would establish privacy rules that would apply across-the-board to all telecommunications carriers. The bill was re-introduced in 1995 as Assembly bill number 6845.

3. The Commission should broaden the issues under consideration in this proceeding in order to clarify how the privacy provisions of the Telecommunications Act of 1996 apply to all telecommunications carriers.

II. DISCUSSION

4. The NPRM addresses several issues, but focuses primarily on how the Act applies to telephone companies and telephone services. Thus, the NPRM devotes most of its attention to issues such as whether the "telecommunications service" for which a telephone company may use CPNI means local or interexchange telephone service and whether the term's meaning changes depending on whether the company is a local exchange carrier or an interexchange carrier. NPRM at ¶¶ 20-26.

5. The scope of the proceeding should be broadened so that the Commission may give a clear interpretation of how the Act applies to other existing and potential carriers. Examples include existing direct broadcast satellite television, microwave television, and cable television, as well as more novel services such as a company providing an "open video" system under the Act or a wireless data service such as the wireless Internet access service provided by the wireless television company, CAI Wireless, Inc. The fundamental question is what privacy rules does the Act place on these kinds of services.

6. The Act itself is less than clear on this fundamental question. Section 702 of the 1996 Act added a new Section 222 to

the Communications Act of 1934, as amended. Section 222(a) says that "In General-Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to...customers." However, the particulars of this general obligation are only set forth in Section 222(c), which states that certain rules apply to "Customer Proprietary Network Information (CPNI)."

7. The difficulty lurks in the meaning of CPNI, which Section 222(f)(1) defines as:

(A) information that relates to the quantity, technical configuration, type, destination and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available by the customer solely by virtue of the carrier-customer relationship, and

(B) information contained in the bills pertaining to the telephone exchange service or telephone toll service received by a customer of a carrier, except that such term does not include subscriber list information.

8. Section 222(f)(1)(A) seems fairly broad and arguably would include all personally identifiable information regarding a customer. However, Section 222(f)(1)(B) puts such a broad reading in doubt. The language of (B) suggests that billing information is not included within the meaning of (A), unless the language of (B) is superfluous. Further, (B)'s expression of protection of telephone billing information implies, by the principle of

expressio unius est exclusio alterius, that protection does not extend to billing information for services other than telephone. Does either or both clause include all personally identifiable information about a customer?

9. The historical context provides no clear answer to the question of what Congress meant when it used the term "CPNI." Prior to the 1996 Act, the term "CPNI" appeared in the Commission's rules to govern common carrier telephone services only. In developing those rules, the Commission's primary concern was to prevent primary service providers from using their stores of personal information to gain an anticompetitive advantage in unregulated telephone service markets. Privacy was a concern, but a secondary one. Thus, the Commission's rules on CPNI did not even apply to all telephone companies. See Privacy and the NII, Safeguarding Telecommunications-Related Personal Information, National Telecommunications and Information Administration (1995) [hereinafter NTIA], at 12-13. It might be argued that the 1996 Congress understood "CPNI" to mean something close to the Commission's use of the term--and, to not include services other than telephone service.

10. The Joint Conference Report on the bill (S.652) does not explain the meaning of the Act's language. The Report says that the conference agreement adopted the Senate provisions with some modifications. The Senate version was phrased in terms of the CPNI responsibilities of BOCs, similar to the scope of the FCC's past treatment of the issue. The Report does not specifically address

the modifications and any distinctions between telephone and other telecommunications services. Conference Report at 203-205.

11. The fact that the Act places the CPNI rules in Title II also suggest that its scope might be limited to traditional common carriers governed by Title II, and not to companies that are governed by other titles.

12. My own position is that the right policy on telecommunications privacy is for certain minimum privacy protections to apply across-the-board to all kinds of telecommunications services. These uniform privacy requirements should include customer notice and consent before a company uses or discloses personal information. As technologies merge and blend, customers would have some assurance that their privacy was protected, regardless of which "telecommunications" company they picked out of the "yellow pages." Additionally, the blended and merged companies should be assured that they and their competitors are all operating on the same level playing field in terms of privacy requirements. The 1995 NTIA white paper called for such uniform minimum privacy protection. The NTIA did express the hope that industry self-regulation would obviate the need for legislation. NTIA at 19-27. The bill which I am sponsoring in the New York Assembly attempts to establish such uniform privacy requirements in law.

III. CONCLUSION

13. The question for the Commission is whether the 1996 Act

did establish uniform, across-the-board rules for all telecommunications services, and, if so, exactly what are those rules. I urge the Commission to use its expertise to interpret and explain the privacy provisions of the 1996 Act. Telecommunications customers and companies would all greatly benefit from a clear, authoritative expression of what the rules of the road are for everybody.

Respectfully submitted,



**Anthony J. Genovesi
Chairman
New York State Assembly
Committee on Oversight, Analysis
and Investigation**

**Legislative Office Building
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Albany, New York 12248-0001**

Date: June 10, 1996