Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of | |
| Implementation of the Telecommunications Act of 1996: | CC Docket No. 96-115 |
| Telecommunications Carriers' Use of Customer Proprietary Network Information and other Customer Information; | |
| Petition for Rulemaking to Enhance Security and Authentication Standards for Access to Customer Proprietary Network Information | RM-11277 |

# COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE CALIFORNIA PUBLIC UTILITIES COMMISSION

The People of the State of California and the California Public Utilities Commission ("California" or "CPUC") hereby respectfully submit these comments in response to the Notice of Proposed Rulemaking ("NPRM") issued by the Federal Communications Commission ("FCC") in the above-entitled proceeding.

## I. INTRODUCTION

The Federal Communications Commission (FCC) is seeking comment on whether it should take additional steps to protect the privacy of customer proprietary network information (CPNI). The FCC is responding to a Petition filed by the Electronic Privacy Information Center (EPIC), which expressed concerns about the sufficiency of carrier practices related to CPNI.

Specifically, EPIC's Petition notes that there are several web sites that advertise the sale of personal telephone records, including cell phone records, calling records for land-line and Voice over Internet Protocol (VoIP) numbers, as well as for non-published phone numbers.

Currently, CPNI is regulated at the federal level under §222 of the 1996 Telecommunications Act (1996 Act), and in California under §2891 and §2891.1 of the California Public Utilities (P.U.) Code. These sections create a framework in California to govern telecommunications carriers' use of information obtained by virtue of their provision of telecommunications services.

### A. How CPNI Is Being Used by California Carriers

The CPUC has been in dialogue with concerned carriers and inquired how each of these companies protects customer's CPNI. Of the responses received, all the companies were greatly concerned that there may be leaks in their protective systems.

Common CPNI protection measures include annual reviews of company practices, privacy protection training for employees (including customer service representatives), encouraging or requiring the use of user passwords, and releasing CPNI only if requested by the account holder in writing or in person with photo ID. In most cases, both residential and business customers were covered by carrier CPNI protections, whether dictated by their California or federal tariffs or by the respective company policy. Several carriers, including AT&T, stated that should a breach of CPNI security occur, a full investigation would be launched, and any affected customers would be notified. Carriers that offer online access to user accounts protect the customer by requiring both the user ID and a unique user-selected password;

should the user forget his or her information, a new password is sent to the user's email address.

California recommends that the FCC encourage federally regulated carriers to institute strict requirements for outsiders to gain access to CPNI (using passwords), and that such access be available within each company *only* to those employees who need the information to perform their jobs. Finally, the FCC should consider adopting AT&T's current practice to notify customers when the company discovers that a customer's CPNI has been given out without the customer's consent.

### B. Respect for Unpublished Cell Numbers

California is one of ten states that have taken a special interest in an individual's right of privacy by making it an unalienable state constitutional right. In 1974, the California Constitution was amended to include the following language:

> All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life, liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety, happiness, and privacy. (See, Cal. Const. Art. I, § 1.)

Proponents of this constitutional amendment included a statement in the state election brochure that read, in part, as follows:

> Computerization of records makes it possible to create 'cradle-to-grave' profiles of every American. At present there are no effective restraints on the information activities of government and business. This amendment creates a legal and enforceable right of privacy for every Californian.
>
> The right of privacy is the right to be left alone… It prevents …business interests from collecting and stockpiling unnecessary information about us and from misusing the information gathered for one

> purpose in order to serve purposes or to embarrass us. Fundamental to our privacy is the ability to control circulation of personal information…The proliferation of …business records over which we have no control limits our ability to control our personal lives. (quoting November 1972 state election brochure at 233).

Californians' interest in privacy has been explicitly extended to CPNI through Public Utilities (P.U.) Code § 2891. P.U. Code § 2891 prohibits telephone corporations from making available "to any other person or corporation" private financial information, calling patterns, types of telephone services utilized or demographic information about a residential customer without obtaining the customer's consent."

P.U. Code § 2891.1 further limits the use of information about a subscriber:

> A telephone corporation selling or licensing lists of residential subscribers shall not include the telephone number of any subscriber assigned an unlisted or unpublished access number.

PU Code § 2891.1 was drafted in reaction to a huge public outcry that occurred when then- Pacific Bell announced plans, in mid-March 1986, to begin selling customer directory information to third parties. The legislative history of this law found that consumer privacy was of paramount importance in enacting this statute.

Two other relevant sections of the P.U. Code are focused on wiretap issues but can be read as being directly applicable to the issue being addressed by the FCC. P.U. Code § 7903 mandates as follows:

> Every agent, operator, or employee of any telegraph or telephone office, who in any way uses or appropriates any information derived by him from any private message passing through his hands, and addressed to any other person, or in any other manner acquired by him by reason of his trust as such agent, obtained, or in any manner turns, or

> attempts to turn, the information so obtained to his own account, profit, or advantage, is punishable by imprisonment in the state prison, or by imprisonment in the county jail not exceeding one year, or by fine not exceeding ten thousand dollars ($10,000), or by both such fine and imprisonment.

Furthermore, P.U. Code § 7906 requires as follows:

> The Public Utilities Commission shall regularly make inquiry of every telephone corporation under its jurisdiction to determine whether or not such corporation is taking adequate steps to insure the privacy of communications over such corporation's telephone communication system.

In view of the requirements of California law that are so clearly protective of the privacy of telecommunications customers, the CPUC proposes that cell phone customers, who are the main focus of the FCC's inquiry in this Docket, be afforded similar protections, and be allowed to have their numbers unlisted unless they choose to have them published. This is particularly important for cell phone customers, because such customers typically must pay for incoming as well as outgoing calls. Further, the nature of cell phone use is different from that of a land line. Many customers use their cell phones only when they are outside their home and office. Many of these users only give their cell phone number to a few people to be reached for a specific reason. However, if a customer wants to use a cell phone as the primary phone, the customer can consent to have the cell phone number(s) placed in a cell phone directory. The decision should be made by the customer and not by default.

As a result California believes that the FCC should add to its rules a provision blocking the publication of a subscriber cell phone numbers in a cell phone directory without the service provider first obtaining the explicit, affirmative consent of the subscriber.

Respectfully submitted,

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