

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

In the Matter of

Petition of Public Knowledge et al. for Declaratory Ruling Stating that the Sale of
Non-Aggregate Call Records by
Telecommunications Providers without Consumers' Consent Violates Section 222
of the Communications Act, WC

Docket No. 13-306 (filed Dec. 11, 2013) (Petition); 47 C.F.R. § 1.2.

COMMENT OF
Open Media and Information Companies Initiative (Open MIC), *et al.*

Submitted by:

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This comment, in support of the petition by Public Knowledge *et al.*, is offered by the Open Media and Information Companies Initiative (Open MIC), a non-profit group which works with institutional investors to foster more open and democratic media; and the investment management firms Pax World Management, Trillium Asset Management, Zevin Asset Management, Green Yield Asset Management and Arjuna Capital. These firms collectively have approximately \$6 billion in assets under management (AUM).

Open MIC coalition members are investors, investment advisory and mutual fund companies, foundations, and pension funds with fiduciary interests in a broad range of industries and businesses for which a healthy and robust Internet environment is an economic necessity.

As diversified investors, we believe that customer trust is critical for any business, but especially for Internet and telecommunications companies that gather personal data concerning and affecting the lives of hundreds of millions of people in the U.S. and around the world.

We believe that a robust regime of privacy protections is in the long-term interests of telecommunications companies, their customers, and their investors. Confidence that personal information is respected and protected is a prerequisite for economic growth in the digital age.

In recent months, citing intense global concern over the impact of disclosures regarding surveillance programs directed by the U.S. government agencies, investors in AT&T Inc. and Verizon Communications Inc. have filed shareholder proposals calling on the companies to publish regular reports detailing how often they have shared information with U.S. or foreign governments and what type of customer information has been shared.

The sale of customer data by telecommunications carriers to government agencies has been highlighted as particular concern for investors.

For example, in a January 2014 filing with the Securities and Exchange Commission, the \$160 billion New York State Common Retirement Fund (NYCRF) cited a *New York Times* report that the CIA is paying AT&T more than \$10 million a year “to assist with overseas counterterrorism investigations by exploiting the company’s vast database of phone records, which includes Americans’ international calls, according to government officials.”

The NYSCRF, which manages assets on behalf of more than one million State employees and retirees, noted that the issue of telecommunications carriers and government surveillance

requests “has already had significant impact on the Company's business relationships and prospects. Customer expectations of trust and privacy have been undermined by recent developments.”

The NYSCRF concluded that “The role of AT&T and other telecommunication companies in compliance and cooperation with government information requests has been profiled by media as a specific business risk, potentially costing the Company billions of dollars in business...”

In a similar shareholder proposal filed with Verizon, investors noted that these controversies may also present a challenge to the U.S. economy. The Information Technology and Innovation Foundation has estimated that disclosures regarding surveillance programs could cost the cloud computing industry \$21 – \$35 billion in business over the next three years if foreign customers decide the risks of storing data with a U.S. company outweigh the benefits.

The Verizon shareholders said in their filing: “Privacy is a fundamental tenet of democracy and free expression. While Verizon must comply with its legal obligations, failure to persuade customers of a genuine and long-term commitment to privacy could present Verizon with serious financial, legal and reputational risks.”

We note, as detailed in the Public Knowledge petition, that “phone carriers regularly share—or reserve the right to share—customers’ records in an ‘anonymized’ form with third parties. For example, the privacy policies of all four major mobile carriers (AT&T, Verizon, Sprint, and T-Mobile) state that they may share supposedly ‘anonymized’ or ‘deidentified’ customer information with third parties.”

We also note, as detailed in the petition, that “what carriers refer to as ‘anonymized’ records may not be anonymous at all...The carriers’ methods of ‘anonymization,’ as reported in the media may be vulnerable to ‘re-identification,’ that is, a process that reveals the true identities of individuals in an allegedly ‘anonymous’ dataset. Re-identification is now well understood in both the legal and computer science literature, and can be executed by non-technically trained people.”

As investors, we believe the policies and practices of the telecommunications carriers, as cited in the petitioners’ brief, could present the companies with significant legal, financial, regulatory and reputational risk.

Accordingly, we support the petition of Public Knowledge *et al.* which asks the Commission to issue a declaratory ruling that 1) under Section 222 of the Communications Act, non-aggregate call records that have been purged of personal identifiers but that leave customers' individual characteristics intact are protected as customer proprietary network information (CPNI), and 2) phone carriers including AT&T, Verizon, Sprint, and T-Mobile must not sell such records without customers' consent.

In considering this petition, the Commission is addressing matters of extreme importance to our society and economy, with impact on both widely diversified investors as well as shareholders in individual companies. We thank the Commission for this opportunity to comment and look forward to participating in the ongoing discussion regarding these proceedings.

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