

Access Comment to FCC Proceeding on Petition of Public Knowledge *et al.* for Declaratory Ruling that Section 222 of the Communications Act Prohibits Telecommunications Providers From Selling Non-Aggregate Call Records Without Customers' Consent

Access (AccessNow.org) is an international organization that defends and extends the digital rights of users at risk around the world. Access is committed to protecting internet users' rights no matter where those users reside and we welcome this opportunity to submit a Comment to the Federal Communications Commission (the Commission) as a partner in this effort.

For the following reasons, Access is alarmed by the revelation that the Central Intelligence Agency (CIA) is paying AT&T millions dollars a year for phone records of both US and non-US persons in violation of their right to privacy,¹ and supports Petitioners' call for a declaratory ruling against the practice.²

Metadata reveals private, personal, and identifiable information about individual users.

According to the International Principles on the Application of Human Rights to Communications Surveillance (Principles), metadata can disclose a troubling amount of information on an individual. "When accessed and analysed, communications metadata may create a profile of an individual's life, including medical conditions, political and religious viewpoints, associations, interactions and interests, disclosing as much detail as, or even greater detail than would be discernible from the content of communications."³ The President's Review Group on Intelligence and Communications Technologies similarly cautions about distinct legal standards for metadata and content, noting that while ". . . the legal system has been slow to catch up with these major changes in meta-data, it may well be that, as a practical matter, the distinction itself should be discarded."⁴ Access has called for an end to the bulk collection of metadata under the PATRIOT Act Section 215 for its violation of users' privacy, and believes the voluntary transfer of metadata from telecommunications firms to the CIA should similarly be prohibited.

Telecoms must not voluntarily give records to the government. Phone records reveal the associations, locations, and behavior of users in ever more detailed ways, and implicate the fundamental rights to privacy and free expression. Protected by the Communications Act and the Fourth Amendment, the phone records of US-persons under AT&T's control are nonetheless provided voluntarily and for compensation to the CIA, without adherence to due process. Legal safeguards and procedures protecting individual privacy are the subject of intense scrutiny, and are presently being reviewed to better account for the collection of user data, as evidenced by President Obama's Jan. 17 speech on the topic of signals intelligence. These procedures, however inadequate or incomplete they may be, must not be discarded or bypassed for the

¹ <http://www.nytimes.com/2013/11/07/us/cia-is-said-to-pay-att-for-call-data.html>

² Public Knowledge *et al.*, Petition for Declaratory Ruling, WC 13-306 (filed December 11, 2013) at 11.

³ <https://en.necessaryandproportionate.org/text>

⁴ http://www.whitehouse.gov/sites/default/files/docs/2013-12-12_rg_final_report.pdf



convenience or profit of those in power, and to the detriment of users, through voluntary handovers of call records. Additionally, the government could be perceived as favoring those providers which agree to sell call records over operators who insist on proper legal processes for data sharing.

The transactions at issue violate the Communications Act by revealing identifiable information. As noted by Public Knowledge *et al.*, the transactions between AT&T and the CIA are in violation of Section 222 of the Communications Act. Section 222 prohibits the disclosure of customer proprietary network information (CPNI). The transferred data, which includes call records, constitute CPNI despite attempts to mask the identity of US-persons whose phone numbers are transferred. Such identity masking is widely known to be ineffective, as addressed by the Principles and widely agreed by experts—particularly when combined with other CIA data sets.⁵ Understandings of privacy must adapt to the advance of technology, which now allows the disaggregation of customer identities from so-called “anonymized” data. Regardless of anonymization efforts, the FBI can determine individual user identities without a court order by simply issuing an administrative subpoena to the company to “unmask” the numbers.⁶ Given these concerns, AT&T’s sale of user data can and should be construed as a violation of Section 222’s prohibition on the disclosure of CPNI and a gross intrusion into user privacy.

Access implores the Commission to issue a declaratory ruling that call records constitute CPNI, even after customer names are removed and numbers are partially obscured, in order to prevent telecommunications firms from selling their customers' information to third parties.

Respectfully Submitted,

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⁵ http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1450006

⁶ <http://www.nytimes.com/2013/11/07/us/cia-is-said-to-pay-att-for-call-data.html>