

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:)	
)	
Petition of Public Knowledge for Declaratory Ruling)	WC Docket No. 13-306
That Section 222 of the Communications Act Prohibits)	
Telecommunications Providers from Selling)	
Non-Aggregate Call Records Without Customers’)	
Consent)	

COMMENTS OF CENTURYLINK

I. THE COMMISSION SHOULD DECLINE TO ISSUE A DECLARATORY RULING IN FAVOR OF PUBLIC KNOWLEDGE’S ADVOCACY.

CenturyLink comments here on the Petition for Declaratory Ruling filed on December 11, 2013, by Public Knowledge, *et al.* (“Petition”),¹ and publicly noticed by the Commission on December 18, 2013.² The Petition asks the Commission to declare that call detail information is individually-identifiable CPNI, even when the calling party (or subscriber) information is disassociated from the call detail and the information is rendered anonymous.

CenturyLink understands Public Knowledge’s concerns regarding the potential improper disclosure or use of anonymous call detail. We believe, though, that its argument that such information is individually-identifiable CPNI is based on incorrect assumptions and logic. Moreover, we are confident that there are ways of protecting call detail disassociated from customer identity short of interpreting the federal statute and implementing Commission rules in

¹ Other signatories to the Petition include Benton Foundation, Center for Digital Democracy, Center For Media Justice, Chris Jay Hoofnagle, Common Cause, Consumer Action, Electronic Frontier Foundation, Electronic, Privacy Information Center, Free Press, New America Foundation’s, Open Technology Institute, and U.S. PIRG.

² Public Notice, Wireline Competition Bureau Seeks Comment on Petition of Public Knowledge for Declaratory Ruling that Section 222 of the Communications Act Prohibits Telecommunications Providers from Selling Non-Aggregate Call Records Without Customers’ Consent, DA 13-2415, rel. Dec. 18, 2013.

a manner at odds with their plain language. We make three points in this filing: (1) Call detail information disassociated from a caller's identity is not aggregated customer information but neither is it individually-identifiable CPNI. Still it is information protected under Section 222. (2) There is nothing in the federal statute or Commission rules that requires all customer information to be relegated to one of two categories of information (either individually-identifiable CPNI or aggregated customer information).³ And (3) the law provides room for carriers to create information lists or matrices where customers' identities are removed but specific service information is recognized. Such a model does not reflect individually-identifiable CPNI.

Should the Commission decide to issue a declaration in agreement with Public Knowledge, however, CenturyLink urges the Commission to confine such action to the matter of call detail. Broad statements that all customer information is either "aggregated" or "individually-identifiable CPNI," even when primary identifying aspects of the information (name, address, telephone number, account number) have been removed, is unnecessary and should be avoided.

³ The statute defines the term "aggregated customer information" as "collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed." 47 U.S.C. § 222(f)(2). As the Commission has noted, the statutory definition is almost identical to the definition promulgated by the Commission prior to the 1996 Act. *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, 8167 n. 531 (1998). Neither the Commission's earlier rules nor the statute further define or describe what is a "characteristic" of an individual.

II. CERTAIN OF PUBLIC KNOWLEDGE'S ASSUMPTIONS AND LOGIC ARE IN ERROR.

A. Call Detail Disassociated From Caller/Subscriber Identifications Is Not Individually-Identifiable CPNI.

Public Knowledge argues that call detail information when de-personalized as to caller identity (or when attempted to be rendered anonymous) is not aggregated customer information. CenturyLink agrees. But Public Knowledge goes on to make the unsupported argument that because the information is not aggregated it is -- of necessity -- individually-identifiable CPNI. This is incorrect. The notion propounded by Public Knowledge that customer information must be relegated to only one of two categories is too simplistic a notion both logically and legally.

On the face of it, call detail with no calling party information is *not* individually-identifiable CPNI. While the potential for re-association may inhere in the information, perhaps to be associated with a subscriber (not even necessarily the caller) at some point in the future, that fact does not render the information individually-identifiable CPNI unless and until such re-association takes place.⁴ The potential for re-association does not render the information individually-identifiable CPNI today.

This is not to say that call detail divorced from calling party or subscriber information is not information that is confidential (to both the unknown caller and the carrier) and not worthy of protection. Indeed, carriers are required to protect this information under 47 U.S.C. Section 222(a). This is the point the Commission should stress in response to the Petition. It should not interpret the language of the statute in a manner at odds with its current plain statement. Under a

⁴ CenturyLink does not dispute that in some cases it is possible for knowledgeable and capable persons to re-associate information about persons, though anonymized, with an individual. The scope and extent of this activity, however, is not demonstrated in the Petition. Rather, the Petition cites to general published material for the possibility that anonymized information can sometimes be associated to an individual if one is intent on doing so.

Section 222(a) analysis, the Commission could emphasize that it expects heightened protection of such information by carriers and users, given that it considers call detail a sensitive type of CPNI. Moreover, given the potential for re-identification, the Commission could stress that such information should not be casually disseminated to third parties, be they government or private.

B. Information Can Be Neither Individually-Identifiable CPNI *Nor* Aggregated Customer Information.

According to Public Knowledge, the Commission needs to issue a declaratory ruling that call detail disassociated from caller or subscriber identification is individually-identifiable CPNI in order to protect such information from being improperly released or used by carriers and the government, in particular. But the arguments it proffers do violence to the language of the statute and Commission rules. Additionally, as addressed above, the information at issue (call detail *sans* identifying information) can and should be protected already under 47 U.S.C. Section 222(a), even though it is not individually-identifiable CPNI.

Public Knowledge's position, as outlined in its Petition, is faulty both as a matter of law and logic. According to the Petition, information is either aggregated customer information or individually-identifiable CPNI. If it is not aggregated, then it is necessarily individually-identifiable CPNI. But such argument runs counter to the language of the statute and Commission rules as neither compel such conclusion. There is room under the current CPNI regulatory scheme for information that is neither individually-identifiable CPNI nor aggregated customer information. Anonymized customer information associated with specific service descriptions is just such a type of information.

Neither the CPNI statute nor the Commission's rules mandate that all customer information be characterized as either individually-identifiable CPNI or aggregated customer information. Rather, both simply set forth prescriptions or rules with respect to CPNI

information when it is characterized (and defined) as CPNI identifiable to an individual or customer information that is aggregated. But neither prohibit the creation or formatting of information that is not either individually-identifiable CPNI or aggregated customer information.

If a carrier had some business need to create an internal information product depicting service information associated with specific, but unidentified, customers there is nothing in the law that suggests such would be improper. The information reflected would be neither individually-identifiable CPNI nor aggregated customer information. Consider the following:

Customer A = caller id, call forwarding, voice mail, inside wire, partner wireless services
Customer B = 1FR, voice mail, partner TV services
Customer C = 1FB, inside wire, VoIP telephony

The information above is not individually-identifiable since there is no “key” as to who these customers are. Nor is the information aggregated since the information is not reported out as “collective data” (such data being that there are 2 customers with inside wire or 2 customers with voice mail).

Accordingly, CenturyLink opposes a declaration that suggests that the above type of information product is one expressing individually-identifiable CPNI. Accordingly, we ask that should the Commission decide it agrees with the objective of Public Knowledge, it craft its analysis on narrower grounds than argued by the petitioners. The Commission should not endorse the notion that all customer information falls into only one of two categories (either individually-identifiable CPNI or aggregated customer information). But it might reasonably find that in the case of call detail, the information is a “characteristic” of an individual (albeit not

one identified).⁵ That being the case, coupled with the potential for future re-identification, the information might reasonably be deemed CPNI under Section 222(c).

While CenturyLink does not believe such an approach or conclusion is required by current law, such a result would be preferable to a Commission declaration that any anonymized information associated with unnamed customers is individually-identifiable CPNI. Not only is most anonymized customer information lacking in the kind of sensitivity associated with call detail information, but there would be neither an interest nor an easy means of re-identification to a particular individual.

Respectfully submitted,

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⁵ In the case of call detail, Public Knowledge argues that even when the identity of the individual is removed, the call detail itself is a “characteristic” of an individual that *could* be identified. Because the statutory definition of “aggregated customer information” requires the removal of customer “characteristics,” Public Knowledge argues that the information it addresses cannot be aggregated.