



1818 N St, NW  
Suite 410  
Washington, DC 20036

April 28, 2014

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12 St. SW  
Washington, DC 20554

Re: MB Docket No. 13-306, *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*

Dear Ms. Dortch:

On Thursday, April 24, 2014, Laura Moy, staff attorney, and Harold Feld, Senior Vice President, of Public Knowledge (collectively, "Public Knowledge"), met with Lisa Gelb, Randy Clarke, Denise Cora, and Kristine Fargotstein of the Wireline Competition Bureau, Sade Oshinhbi and Christine Clearwater of the Wireless Telecommunications Bureau, and Jennifer Tattle and Doug Klein of the Office of General Counsel in the above-captioned matter.

Public Knowledge explained that telecommunications customers care very deeply about the personal information contained in their customer records, as evidenced by the numerous filings to that effect in this docket, including a filing by Public Knowledge et al. accompanied by over 7,000 signatures from individual customers.<sup>1</sup> Not only do call records contain

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<sup>1</sup> Comments of Public Knowledge, *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*, WC Docket No. 13-306 (filed Jan. 17, 2014).



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information about customers' relationships and usage behavior, but they also contain detailed information about customers' location and movement patterns.<sup>2</sup>

Public Knowledge argued that the FCC must clarify what constitutes individually identifiable CPNI, and that individually identifiable CPNI includes non-aggregate customer information that has been "de-identified." When Congress created Section 222 of the Communications Act, it did not do so with the intention that telecommunications carriers decide for themselves what constitutes individually identifiable customer proprietary network information ("CPNI") and what does not.

Public Knowledge argued that individually identifiable CPNI and aggregate customer information constitute the two categories of a dichotomy, and that customer information must therefore be considered individually identifiable CPNI unless it is aggregate. It would be nonsensical to read a third category of customer information into a statute that explicitly defines only two categories. To do so would lead to the absurd result that the statute would place fewer restrictions on non-aggregate de-identified customer information than it does on aggregate information, even though non-aggregate de-identified customer records raise more privacy concerns than aggregate customer information.

Public Knowledge explained that declaring that non-aggregate customer information that has been "de-identified" nevertheless constitutes individually identifiable CPNI would not preclude telecommunications carriers from using non-aggregate customer information to generate aggregate customer information. Telecommunications carriers can generate aggregate customer information without prior opt-in consent from customers

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<sup>2</sup> See Reply Comments of Vitaly Shmatikov, WC Docket No. 13-306 (filed Mar. 5, 2014), at 2–3.



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without violating Section 222 by implementing differential privacy database mechanisms to store customer information in databases that can be analyzed, and from which attributes can be extracted, but in which raw data can never be accessed directly.<sup>3</sup>

Finally, Public Knowledge urged the FCC to define individually identifiable CPNI broadly. Information that is believed to be anonymous today could be re-identified with tomorrow's technology. Once consumers have suffered the harm of having highly personal information about themselves released, that harm can never be undone.

Respectfully submitted,

/s/

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Laura M. Moy  
Public Knowledge  
1818 N St, NW  
Suite 410  
Washington, DC 20036  
(202) 861-0020 x106

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<sup>3</sup> See, e.g., Cynthia Dwork, *A Firm Foundation for Private Data Analysis* (2011), available at [http://research.microsoft.com/pubs/116123/dwork\\_cacm.pdf](http://research.microsoft.com/pubs/116123/dwork_cacm.pdf).