

FCC Seeks Comment On Whether To Modify Its CPNI Rules - Resulting Rules Could Impose Additional Requirements On Carriers

On February 14, 2006, the Federal Communications Commission (“FCC”) released a notice of proposed rulemaking (“NPRM”) seeking comment on additional measures to protect the confidentiality of customer proprietary network information (“CPNI”). The FCC’s NPRM is the latest in a series of actions this month reacting to reports of public disclosure of cell phone records by information brokers. In this NPRM, the FCC grants a petition for rulemaking filed by the Electronic Privacy Information Center (“EPIC”) regarding the sufficiency of carrier practices—both wireline and wireless carriers—to protect against the unlawful disclosure of CPNI. Comments will be due **thirty days** after publication in the Federal Register and reply comments will be due **sixty days** after publication in the Federal Register.

EPIC has expressed concern about the proliferation of personal information, including, for example, call detail records and other CPNI, made available for sale by data brokers. To this end, the FCC has sought comment on the scope of the problem that EPIC has identified. Specifically, the FCC has sought comment on whether data brokers are able to take advantage of relaxed security procedures. The FCC also has sought comment on whether brokers are able to obtain access to CPNI through pretexting – a practice through which a person falsely represents to a carrier that he or she is a company employee or a particular customer who seeks access to his or her own CPNI.

The FCC has sought comment on whether its current CPNI rules are sufficient to prevent the unauthorized disclosure of CPNI. Among other issues, the FCC has sought comment on whether it should require carriers to implement additional security procedures to prevent disclosure of CPNI through pretexting. If the FCC were to modify its CPNI rules, it could impact the manner in which carriers currently conduct business, not only with regard to marketing services to customers, but also with regard to providing services to its customers. As one example, the FCC seeks comment on whether it should require carriers to obtain opt-in consent from a customer prior to disclosing that customer’s CPNI to the carrier’s joint venture partners or independent contractors that provide communications-related services. The FCC has sought comment on whether modifying its rules in this manner would better protect customer privacy and whether the costs of the rule change would outweigh the benefits.

The FCC also seeks comment on five security measures that EPIC has proposed to protect CPNI: consumer-set passwords, audit trails, encryption, limiting data retention, and notice procedures. The FCC seeks comment on the feasibility, advisability, and cost-benefit analysis of these and other measures. The FCC also has sought comment on other measures to guard against fraudulent and unauthorized disclosure of CPNI. The FCC has

acknowledged that certain anti-fraud measures might be better developed outside of public scrutiny, and has asked carriers to describe the steps they intend to take privately to develop more effective measures to secure CPNI from unauthorized disclosure.

In the Public Notice, the FCC also seeks comment on the enforcement measures that it should take regarding CPNI. Specifically, the FCC sought comment on whether it should adopt a set of security measures that would exempt a carrier from liability or establish a safe harbor if the carrier implemented those requirements. The FCC similarly sought comment on whether failure to comply with a minimum set of regulations should form the basis of a violation.

In addition to the issues identified herein, the FCC has sought comment on a variety of related CPNI security issues and how to implement any measures that it may adopt. For example, the FCC has sought comment on whether it should treat smaller carriers differently from larger carriers or take other measures that would result in treating some carriers differently from other carriers.

For more information or if you are interested in submitting comments in this proceeding, please contact:

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