

110TH CONGRESS
1ST SESSION

S. 780

To amend the Communications Act of 1934 to prohibit the unlawful acquisition and use of confidential customer proprietary network information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 6, 2007

Mr. PRYOR introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Communications Act of 1934 to prohibit the unlawful acquisition and use of confidential customer proprietary network information, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Protecting Consumer Phone Records Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Unauthorized acquisition, use, or sale of confidential customer proprietary network telephone information.

Sec. 3. Enhanced confidentiality procedures.

- Sec. 4. Penalties; extension of confidentiality requirements to other entities.
Sec. 5. Enforcement by Federal Trade Commission.
Sec. 6. Concurrent enforcement by Federal Communications Commission.
Sec. 7. Enforcement by States.
Sec. 8. Consumer outreach and education.

1 **SEC. 2. UNAUTHORIZED ACQUISITION, USE, OR SALE OF**
2 **CONFIDENTIAL CUSTOMER PROPRIETARY**
3 **NETWORK TELEPHONE INFORMATION.**

4 (a) IN GENERAL.—It is unlawful for any person—

5 (1) to acquire or use the customer proprietary
6 network information of another person without that
7 person’s affirmative written consent, which shall in-
8 clude electronic consent that meets the requirements
9 of the Electronic Signatures in Global and National
10 Commerce Act (15 U.S.C. 7001 et seq.);

11 (2) to misrepresent that another person has
12 consented to the acquisition or use of such other
13 person’s customer proprietary network information
14 in order to acquire such information;

15 (3) to obtain unauthorized access to the data
16 processing system or records of a telecommuni-
17 cations carrier or an IP-enabled voice service pro-
18 vider in order to acquire the customer proprietary
19 network information of 1 or more other persons;

20 (4) to sell, or offer for sale, customer propri-
21 etary network information; or

22 (5) to request that another person obtain cus-
23 tomer proprietary network information from a tele-

1 communications carrier or IP-enabled voice service
2 provider, knowing that the other person will obtain
3 the information from such carrier or provider in any
4 manner that is unlawful under subsection (a).

5 (b) EXCEPTIONS.—

6 (1) APPLICATION WITH SECTION 222 OF COM-
7 MUNICATIONS ACT OF 1934.—This Act does not pro-
8 hibit a telecommunications carrier or an IP-enabled
9 voice service provider or any third party that law-
10 fully obtains such information from a carrier or pro-
11 vider from engaging in any act or practice that was
12 not prohibited by section 222 of the Communications
13 Act of 1934 (47 U.S.C. 222) or regulations that are
14 consistent with the provisions of section 222, as that
15 section and those regulations were in effect on the
16 day before the date of enactment of this Act.

17 (2) APPLICATION OF OTHER LAWS.—This Act
18 does not prohibit any act or practice otherwise au-
19 thorized by law, including any lawfully authorized
20 investigative, protective, or intelligence activity of a
21 law enforcement agency or the United States, a
22 State, or a political subdivision of a State, or an in-
23 telligence agency of the United States.

24 (3) TREATMENT OF IP-ENABLED VOICE SERV-
25 ICE PROVIDERS.—For purposes of this section, an

1 IP-enabled voice service provider shall be treated as
2 if it were a telecommunications carrier covered by
3 section 222 of the Communications Act of 1934 (47
4 U.S.C. 222) before the date of enactment of this
5 Act.

6 (4) CALLER ID.—Nothing in this Act prohibits
7 the use of caller identification services by any person
8 to identify the originator of telephone calls received
9 by that person.

10 (c) PRIVATE RIGHT OF ACTION FOR PROVIDERS.—

11 (1) IN GENERAL.—A telecommunications car-
12 rier or IP-enabled voice service provider may bring
13 a civil action in an appropriate State court, or in
14 any United States district court that meets applica-
15 ble requirements relating to venue under section
16 1391 of title 28, United States Code, or for any ju-
17 dicial district in which the carrier or service provider
18 resides or conducts business—

19 (A) based on a violation of this section or
20 the regulations prescribed under this section to
21 enjoin such violation;

22 (B) to recover for actual monetary loss
23 from such a violation, or to receive \$11,000 in
24 damages for each such violation, whichever is
25 greater; or

1 (C) both.

2 (2) TREBLE DAMAGES.—If the court finds that
3 the defendant willfully or knowingly violated this
4 section or the regulations prescribed under this sec-
5 tion, the court may, in its discretion, increase the
6 amount of the award to an amount equal to not
7 more than 3 times the amount available under para-
8 graph (1) of this subsection.

9 (3) INFLATION ADJUSTMENT.—The \$11,000
10 amount in paragraph (1)(B) shall be adjusted for in-
11 flation as if it were a civil monetary penalty, as de-
12 fined in section 3(2) of the Federal Civil Penalties
13 Inflation Adjustment Act of 1996 (28 U.S.C. 2461
14 note).

15 (d) PRIVATE RIGHT OF ACTION FOR CONSUMERS.—

16 (1) IN GENERAL.—An individual who has been
17 caused harm as a result of their confidential propri-
18 etary network information being obtained, used, or
19 sold in violation of this section may file a civil action
20 in any court of competent jurisdiction against the
21 person who caused the harm as a result of a viola-
22 tion of this section.

23 (2) REMEDIES.—A court in which such civil ac-
24 tion has been brought may award damages of not
25 more than \$11,000 for each violation of this section

1 with respect to the plaintiff's customer proprietary
2 network information and provide such additional re-
3 lief as the court deems appropriate, including the
4 award of court costs, investigative costs, and reason-
5 able attorney's fees.

6 (3) TREBLE DAMAGES.—If the court finds that
7 the defendant willfully or knowingly violated this
8 section or the regulations prescribed under this sec-
9 tion, the court may, in its discretion, increase the
10 amount of the award to not more than 3 times the
11 damages determined by the court under paragraph
12 (2).

13 (4) INFLATION ADJUSTMENT.—The \$11,000
14 amount in paragraph (2) shall be adjusted for infla-
15 tion as if it were a civil monetary penalty, as defined
16 in section 3 (2) of the Federal Civil Penalties Infla-
17 tion Adjustment Act of 1996 (28 U.S.C. 2461 note).

18 (e) CIVIL PENALTY.—

19 (1) IN GENERAL.—Any person who violates this
20 section shall be subject to a civil penalty of not more
21 than \$11,000 for each violation or each day of a
22 continuing violation, except that the amount as-
23 sessed for any continuing violation shall not exceed
24 a total of \$11,000,000 for any single act or failure
25 to act.

1 (2) SEPARATE VIOLATIONS.—A violation of this
2 section with respect to the customer proprietary net-
3 work information of 1 person shall be treated as a
4 separate violation from a violation with respect to
5 the customer proprietary network information of any
6 other person.

7 (f) LIMITATION.—Nothing in this Act or section 222
8 of the Communications Act of 1934 (47 U.S.C. 222) au-
9 thorizes a subscriber to bring a civil action against a tele-
10 communications carrier or an IP-enabled voice service pro-
11 vider.

12 (g) DEFINITIONS.—In this section:

13 (1) CUSTOMER PROPRIETARY NETWORK INFOR-
14 MATION.—The term “customer proprietary network
15 information” has the meaning given that term by
16 section 222(i)(1) of the Communications Act of
17 1934 (47 U.S.C. 222(i)(1)).

18 (2) IP-ENABLED VOICE SERVICE.—The term
19 “IP-enabled voice service” has the meaning given
20 that term by section 222(i)(8) of the Communica-
21 tions Act of 1934 (47 U.S.C. 222(i)(8)).

22 (3) TELECOMMUNICATIONS CARRIER.—The
23 term “telecommunications carrier” has the meaning
24 given it by section 3(44) of the Communications Act
25 of 1934 (47 U.S.C. 3(44)).

1 **SEC. 3. ENHANCED CONFIDENTIALITY PROCEDURES.**

2 (a) IN GENERAL.—Within 180 days after the date
3 of enactment of this Act, the Federal Communications
4 Commission shall—

5 (1) revise or supplement its regulations, to the
6 extent the Commission determines it is necessary, to
7 require a telecommunications carrier or IP-enabled
8 voice service provider to protect—

9 (A) the security and confidentiality of cus-
10 tomer proprietary network information (as de-
11 fined in section 222(i)(1) of the Communica-
12 tions Act of 1934 (47 U.S.C. 222(i)(1))),

13 (B) customer proprietary network informa-
14 tion against any anticipated threats or hazards
15 to its security or confidentiality, and

16 (C) customer proprietary network informa-
17 tion from unauthorized access or use that could
18 result in substantial harm or inconvenience to
19 its customers, and

20 (2) ensure that any revised or supplemental
21 regulations are similar in scope and structure to the
22 Federal Trade Commission’s regulations in part 314
23 of title 16, Code of Federal Regulations, as such
24 regulations are in effect on the date of enactment of
25 this Act, taking into consideration the differences

1 between financial information and customer propri-
2 etary network information.

3 (b) COMPLIANCE CERTIFICATION.—Each tele-
4 communications carrier and IP-enabled voice service pro-
5 vider to which the regulations under subsection (a) and
6 section 222 of the Communications Act of 1934 (47
7 U.S.C. 222) apply shall file with the Commission annually
8 a certification that, for the period covered by the filing,
9 it has been in compliance with those requirements.

10 **SEC. 4. PENALTIES; EXTENSION OF CONFIDENTIALITY RE-**
11 **QUIREMENTS TO OTHER ENTITIES.**

12 (a) PENALTIES.—Title V of the Communications Act
13 of 1934 (47 U.S.C. 501 et seq.) is amended by inserting
14 after section 508 the following:

15 **“SEC. 509. PENALTIES FOR CONFIDENTIAL CUSTOMER PRO-**
16 **PRIETARY NETWORK INFORMATION VIOLA-**
17 **TIONS.**

18 “(a) CIVIL FORFEITURE.—

19 “(1) IN GENERAL.—Any person determined by
20 the Commission, in accordance with paragraphs (3)
21 and (4) of section 503(b), to have violated section 2
22 of the Protecting Consumer Phone Records Act shall
23 be liable to the United States for a forfeiture pen-
24 alty. A forfeiture penalty under this subsection shall
25 be in addition to any other penalty provided for by

1 this Act. The amount of the forfeiture penalty deter-
2 mined under this subsection shall not exceed
3 \$30,000 for each violation, or 3 times that amount
4 for each day of a continuing violation, except that
5 the amount assessed for any continuing violation
6 shall not exceed a total of \$3,000,000 for any single
7 act or failure to act.

8 “(2) RECOVERY.—Any forfeiture penalty deter-
9 mined under paragraph (1) shall be recoverable pur-
10 suant to section 504(a) of this Act.

11 “(3) PROCEDURE.—No forfeiture liability shall
12 be determined under paragraph (1) against any per-
13 son unless such person receives the notice required
14 by section 503(b)(3) or section 503(b)(4) of this
15 Act.

16 “(4) 2-YEAR STATUTE OF LIMITATIONS.—No
17 forfeiture penalty shall be determined or imposed
18 against any person under paragraph (1) if the viola-
19 tion charged occurred more than 2 years prior to the
20 date of issuance of the required notice or notice or
21 apparent liability.

22 “(b) CRIMINAL FINE.—Any person who willfully and
23 knowingly violates section 2 of the Protecting Consumer
24 Phone Records Act shall upon conviction thereof be fined
25 not more than \$30,000 for each violation, or 3 times that

1 amount for each day of a continuing violation, in lieu of
2 the fine provided by section 501 for such a violation. This
3 subsection does not supersede the provisions of section
4 501 relating to imprisonment or the imposition of a pen-
5 alty of both fine and imprisonment.”.

6 (b) EXTENSION OF CONFIDENTIALITY REQUIRE-
7 MENTS TO IP-ENABLED VOICE SERVICE PROVIDERS.—
8 Section 222 of the Communications Act of 1934 (47
9 U.S.C. 222) is amended—

10 (1) by inserting “or IP-enabled voice service
11 provider” after “telecommunications carrier” each
12 place it appears except in subsections (e) and (g);

13 (2) by inserting “or IP-enabled voice service
14 provider” after “exchange service” in subsection (g);

15 (3) by striking “telecommunication carriers”
16 each place it appears in subsection (a) and inserting
17 “telecommunications carriers or IP-enabled voice
18 service providers”;

19 (4) by inserting “or provider” after “carrier” in
20 subsection (d)(2) and in paragraphs (1)(A) and (B)
21 and (3)(A) and (B) of subsection (h);

22 (5) by inserting “or provider-customer” after
23 “carrier-customer” in subsection (h)(1)(A);

24 (6) by inserting “or providers” after “carriers”
25 in subsection (d)(2);

1 (7) by inserting “AND IP-ENABLED VOICE
2 SERVICE PROVIDER” after “CARRIER” in the cap-
3 tion of subsection (b);

4 (8) by inserting “AND IP-ENABLED VOICE SERV-
5 ICE PROVIDERS” after “CARRIERS” in the caption of
6 subsection (c)(1);

7 (9) by inserting “or IP-enabled voice service”
8 after “service” in subsection (h)(1)(A); and

9 (10) by striking “telephone exchange service or
10 telephone toll service” in subsection (h)(1)(B) and
11 inserting “telephone exchange service, telephone toll
12 service, or IP-enabled voice service”.

13 (c) DEFINITION.—Section 222(h) of the Communica-
14 tions Act of 1934 (47 U.S.C. 222(h)) is amended by add-
15 ing at the end the following:

16 “(8) IP-ENABLED VOICE SERVICE.—The term
17 ‘IP-enabled voice service’ means the provision of
18 real-time 2-way voice communications offered to the
19 public, or such classes of users as to be effectively
20 available to the public, transmitted through cus-
21 tomer premises equipment using TCP/IP protocol,
22 or a successor protocol, for a fee (whether part of
23 a bundle of services or separately) with 2-way inter-
24 connection capability such that the service can origi-

1 nate traffic to, or terminate traffic from, the public
2 switched telephone network.”.

3 (d) TELECOMMUNICATIONS CARRIER AND IP-EN-
4 ABLED VOICE SERVICE PROVIDER NOTIFICATION RE-
5 QUIREMENT.—Section 222 of the Communications Act of
6 1934 (47 U.S.C. 222), is further amended—

7 (1) by redesignating subsection (h) as sub-
8 section (i);

9 (2) by inserting after subsection (g) the fol-
10 lowing new subsection:

11 “(h) NOTICE OF VIOLATIONS.—

12 “(1) IN GENERAL.—The Commission shall by
13 regulation require each telecommunications carrier
14 or IP-enabled voice service provider to notify a cus-
15 tomer within 14 calendar days after the carrier or
16 provider is notified of, or becomes aware of, an inci-
17 dent in which customer proprietary network infor-
18 mation relating to such customer was disclosed to
19 someone other than the customer in violation of this
20 section or section 2 of the Protecting Consumer
21 Phone Records Act.

22 “(2) LAW ENFORCEMENT AND HOMELAND SE-
23 CURITY RELATED DELAYS.—Notwithstanding para-
24 graph (1), a telecommunications carrier or IP-en-

1 abled voice service provider may delay the required
2 notification for a reasonable period of time if—

3 “(A) a Federal or State law enforcement
4 agency determines that giving notice within the
5 14-day period would materially impede a civil or
6 criminal investigation; or

7 “(B) a Federal national security agency or
8 the Department of Homeland Security deter-
9 mines that giving notice within the 14-day pe-
10 riod would threaten national or homeland secu-
11 rity.”; and

12 (3) by striking “information.” in paragraph (1)
13 of subsection (i), as redesignated, and inserting “in-
14 formation nor does it include information that is re-
15 lated to non-voice service features bundled with IP-
16 enabled voice service.”.

17 (e) STATUTE OF LIMITATIONS.—Section
18 503(b)(6)(B) of the Communications Act of 1934 (47
19 U.S.C. 503(b)(6)(B)) is amended to read as follows:

20 “(B) such person does not hold a broad-
21 cast station license issued under title III of this
22 Act and—

23 “(i) the person is charged with vio-
24 lating section 222 and the violation oc-
25 curred more than 2 years prior to the date

1 of issuance of the required notice or notice
2 of apparent liability; or

3 “(ii) the person is charged with vio-
4 lating any other provision of this Act and
5 the violation occurred more than 1 year
6 prior to the date of issuance of the re-
7 quired notice or notice of apparent liabil-
8 ity.”.

9 (f) APPLICATION OF CABLE SUBSCRIBER PRIVACY
10 RULES TO IP-ENABLED VOICE SERVICE PROVIDERS.—
11 Section 631 of the Communications Act of 1934 (47
12 U.S.C. 551) is amended by adding at the end the fol-
13 lowing:

14 “(i) CUSTOMER PROPRIETARY NETWORK INFORMA-
15 TION.—This section does not apply to customer propri-
16 etary network information (as defined in section 222(i)(1)
17 of this Act) as it relates to the provision of IP-enabled
18 voice service (as defined in section 222(i)(8) of this Act)
19 by a cable operator to the extent that section 222 of this
20 Act and section 2 of the Protecting Consumer Phone
21 Records Act applies to such information.”.

22 **SEC. 5. ENFORCEMENT BY FEDERAL TRADE COMMISSION.**

23 (a) IN GENERAL.—Except as provided in sections 6
24 and 7 of this Act, section 2 of this Act shall be enforced
25 by the Federal Trade Commission with respect to any en-

1 tity subject to the jurisdiction of the Commission under
2 section 5(a)(2) of the Federal Trade Commission Act (15
3 U.S.C. 45(a)(2)).

4 (b) VIOLATION TREATED AS AN UNFAIR OR DECEP-
5 TIVE ACT OR PRACTICE.—Violation of section 2 shall be
6 treated as an unfair or deceptive act or practice proscribed
7 under a rule issued under section 18(a)(1)(B) of the Fed-
8 eral Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

9 (c) ACTIONS BY THE COMMISSION.—The Commission
10 shall prevent any person from violating this Act in the
11 same manner, by the same means, and with the same ju-
12 risdiction, powers, and duties as though all applicable
13 terms and provisions of the Federal Trade Commission
14 Act (15 U.S.C. 41 et seq.) were incorporated into and
15 made a part of this Act. Any person that violates section
16 2 is subject to the penalties and entitled to the privileges
17 and immunities provided in the Federal Trade Commis-
18 sion Act in the same manner, by the same means, and
19 with the same jurisdiction, powers, and duties as though
20 all applicable terms and provisions of the Federal Trade
21 Commission Act were incorporated into and made a part
22 of this Act. Nothing in section 2(d) of this Act limits any
23 penalty under the Federal Trade Commission Act as that
24 Act is made applicable to violations of section 2 by the
25 preceding sentence.

1 **SEC. 6. CONCURRENT ENFORCEMENT BY FEDERAL COM-**
2 **MUNICATIONS COMMISSION.**

3 (a) IN GENERAL.—The Federal Communications
4 Commission shall have concurrent jurisdiction to enforce
5 section 2.

6 (b) PENALTY; PROCEDURE.—For purposes of en-
7 forcement of that section by the Commission—

8 (1) a violation of section 2 of this Act is
9 deemed to be a violation of a provision of the Com-
10 munications Act of 1934 (47 U.S.C. 151 et seq.)
11 rather than a violation of the Federal Trade Com-
12 mission Act; and

13 (2) the provisions of section 509(a)(2), (3), and
14 (4) of the Communications Act of 1934 shall apply
15 to the imposition and collection of the civil penalty
16 imposed by section 2 of this Act as if it were the
17 civil penalty imposed by section 509(a)(1) of that
18 Act.

19 **SEC. 7. ENFORCEMENT BY STATES.**

20 (a) IN GENERAL.—The chief legal officer of a State,
21 or any other State officer authorized by law to bring ac-
22 tions on behalf of the residents of a State, may bring a
23 civil action, as *parens patriae*, on behalf of the residents
24 of that State in an appropriate district court of the United
25 States to enforce section 2 or to impose the civil penalties
26 for violation of that section, whenever the chief legal offi-

1 cer or other State officer has reason to believe that the
2 interests of the residents of the State have been or are
3 being threatened or adversely affected by a violation of
4 this Act or a regulation under this Act.

5 (b) NOTICE.—The chief legal officer or other State
6 officer shall serve written notice on the Federal Trade
7 Commission and the Federal Communications Commis-
8 sion of any civil action under subsection (a) prior to initi-
9 ating such civil action. The notice shall include a copy of
10 the complaint to be filed to initiate such civil action, except
11 that if it is not feasible for the State to provide such prior
12 notice, the State shall provide such notice immediately
13 upon instituting such civil action.

14 (c) AUTHORITY TO INTERVENE.—Upon receiving the
15 notice required by subsection (b), either Commission may
16 intervene in such civil action and upon intervening—

17 (1) be heard on all matters arising in such civil
18 action; and

19 (2) file petitions for appeal of a decision in such
20 civil action.

21 (d) CONSTRUCTION.—For purposes of bringing any
22 civil action under subsection (a), nothing in this section
23 shall prevent the chief legal officer or other State officer
24 from exercising the powers conferred on that officer by
25 the laws of such State to conduct investigations or to ad-

1 minister oaths or affirmations or to compel the attendance
2 of witnesses or the production of documentary and other
3 evidence.

4 (e) VENUE; SERVICE OF PROCESS.—

5 (1) VENUE.—An action brought under sub-
6 section (a) shall be brought in a district court of the
7 United States that meets applicable requirements re-
8 lating to venue under section 1391 of title 28,
9 United States Code.

10 (2) SERVICE OF PROCESS.—In an action
11 brought under subsection (a)—

12 (A) process may be served without regard
13 to the territorial limits of the district or of the
14 State in which the action is instituted; and

15 (B) a person who participated in an al-
16 leged violation that is being litigated in the civil
17 action may be joined in the civil action without
18 regard to the residence of the person.

19 (f) LIMITATION ON STATE ACTION WHILE FEDERAL
20 ACTION IS PENDING.—If either Commission has insti-
21 tuted an enforcement action or proceeding for violation of
22 section 2 of this Act, the chief legal officer or other State
23 officer of the State in which the violation occurred may
24 not bring an action under this section during the pendency

1 of the proceeding against any person with respect to whom
2 the Commission has instituted the proceeding.

3 **SEC. 8. CONSUMER OUTREACH AND EDUCATION.**

4 (a) IN GENERAL.—Within 180 days after the date
5 of enactment of this Act, the Federal Trade Commission
6 and Federal Communications Commission shall jointly es-
7 tablish and implement a media and distribution campaign
8 to teach the public about the protection afforded customer
9 proprietary network information under this Act, the Fed-
10 eral Trade Commission Act and the Communications Act
11 of 1934.

12 (b) CAMPAIGN REQUIREMENTS.—The campaign
13 shall—

14 (1) promote understanding of—

15 (A) the problem concerning the theft and
16 misuse of customer proprietary network infor-
17 mation;

18 (B) available methods for consumers to
19 protect their customer proprietary network in-
20 formation; and

21 (C) efforts undertaken by the Federal
22 Trade Commission and the Federal Commu-
23 nications Commission to prevent the problem;
24 and

- 1 (2) explore various distribution platforms to ac-
- 2 complish the goal set forth in paragraph (1).

○