



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

January 13, 2006

The Honorable Edward J. Markey  
Ranking Member  
Subcommittee on Telecommunications  
and the Internet  
Committee on Energy and Commerce  
U.S. House of Representatives  
2108 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Markey:

Thank you for your letter regarding recent reports in the media about the commercial availability of consumer telephone records. The Commission also is very concerned about the availability and sale of such records, and is looking into the troublesome practices described in recent media reports.

The Commission's Enforcement Bureau is currently investigating this practice. Specifically, we are looking into how companies who are selling these records have obtained customer proprietary information. To the extent that they have acquired this information from telecommunications carriers, we will take strong enforcement action to address any noncompliance by carriers with their obligations to protect customer proprietary information under the Communications Act and the Commission's existing rules. To the extent that those involved in obtaining and selling such records have obtained this information fraudulently and without implicating any noncompliance by telecommunications carriers with the Communications Act or Commission rules, the conduct may be more appropriately handled by the Federal Trade Commission. Commission staff have been coordinating with FTC staff on activities underway in both agencies to address this disturbing conduct. We will continue to work closely and cooperatively with FTC staff in this area.

In addition, the Commission recently received a petition filed by the Electronic Privacy Information Center (EPIC) expressing concerns about this issue and requesting that the Commission conduct a rulemaking to enhance security and authentication standards for access to consumer records. According to EPIC, telecommunications carriers' current security standards and measures are not sufficient to prevent private investigators and on-line data brokers from acquiring and selling private customer records. EPIC reports that data brokers use several methods to penetrate security screens, one of which is pretending to have legitimate authority to access protected records, or "pretexting."

Page 2—The Honorable Edward J. Markey—January 13, 2006

Section 222 of the Communications Act obligates carriers to protect the confidentiality of customer proprietary network information (CPNI), but permits carriers to release such records in certain narrow situations. The Commission's rules implementing Section 222 require carriers to establish a system for obtaining customer approval before release of CPNI records, and to train their personnel as to when they are and are not authorized to release such information. In addition, the rules require carriers to record all instances where customer records were disclosed or provided to third parties, or where third parties were allowed access to the records. Each carrier must certify annually that it has established operating procedures that are adequate to ensure compliance with these rules, and must provide a statement explaining how its operating procedures ensure such compliance.

EPIC's petition asks the Commission to examine what additional steps should be taken to strengthen safeguards for customer records. Suggested measures include the adoption of rules requiring carriers: (1) to adopt consumer-set passwords (which may be changed and are not searchable, in contrast to biographical identifiers); (2) to maintain "audit trails" (recording all instances of disclosure of customer records); (3) to store records in encrypted form, (4) to notify the customer and the Commission when security is breached; and (5) to delete customer records that are no longer needed for billing or resolution of disputes.

The Commission placed EPIC's petition on public notice on September 29, 2005, and the record is now closed. Ensuring consumers' privacy is of fundamental concern to the Commission. The record now being reviewed will help the Commission establish whether carriers are meeting consumers' privacy expectations as contemplated by Section 222 and, if the carriers' security measures are falling short, how best to implement appropriate safeguards to protect consumer privacy.

I appreciate your interest in this very important area. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,



Kevin J. Martin  
Chairman