

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2389

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

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## IN THE SENATE OF THE UNITED STATES

MARCH 8, 2006

Mr. ALLEN (for himself, Mr. STEVENS, Mr. INOUE, Mr. BURNS, Mr. WARNER, Mr. SANTORUM, Mr. DORGAN, Mr. NELSON of Florida, Mr. VITTER, Mr. PRYOR, Mr. COLEMAN, Mr. TALENT, Mr. MARTINEZ, and Mr. THUNE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## 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. Preemption of State law.
- Sec. 9. 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;

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

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

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

19 (5) to request that another person obtain cus-  
 20 tomer proprietary network information from a tele-  
 21 communications carrier or IP-enabled voice service

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

4 (b) EXCEPTIONS.—

5 (1) EXISTING PRACTICES PERMITTED.—Nothing  
6 ing in subsection (a) prohibits any practice per-  
7 mitted by section 222 of the Communications Act of  
8 1934 (47 U.S.C. 222), or otherwise authorized by  
9 law, as of the date of enactment of this Act.

10 (2) CALLER ID.—Nothing in subsection (a) pro-  
11 hibits the use of caller identification services by any  
12 person to identify the originator of telephone calls  
13 received by that person.

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

15 (1) IN GENERAL.—A telecommunications car-  
16 rier or IP-enabled voice service provider may bring  
17 a civil action in an appropriate State court, or in  
18 any United States district court that meets applica-  
19 ble requirements relating to venue under section  
20 1391 of title 28, United States Code—

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

24 (B) to recover for actual monetary loss  
25 from such a violation, or to receive \$11,000 in

1 damages for each such violation, whichever is  
2 greater; or

3 (C) both.

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

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

17 (d) CIVIL PENALTY.—

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

9 (A) to ensure the security and confiden-  
10 tiality of customer proprietary network informa-  
11 tion (as defined in section 222(i)(1) of the  
12 Communications Act of 1934 (47 U.S.C.  
13 222(i)(1))),

14 (B) to protect such customer proprietary  
15 network information against threats or hazards  
16 to its security or confidentiality; and

17 (C) to protect customer proprietary net-  
18 work information from unauthorized access or  
19 use that could result in substantial harm or in-  
20 convenience to its customers, and

21 (2) ensure that any revised or supplemental  
22 regulations are similar in scope and structure to the  
23 Federal Trade Commission’s regulations in part 314  
24 of title 16, Code of Federal Regulations, taking into  
25 consideration the differences between financial infor-

1       mation and customer proprietary network informa-  
2       tion.

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 telecommunications  
20       carrier or IP-enabled voice service provider that is  
21       determined by the Commission, in accordance with  
22       paragraphs (3) and (4) of section 503(b), to have  
23       violated section 222 of this Act shall be liable to the  
24       United States for a forfeiture penalty. A forfeiture  
25       penalty under this subsection shall be in addition to

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

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

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

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

23 “(b) CRIMINAL FINE.—Any person who willfully and  
24 knowingly violates section 222 of this Act shall upon con-  
25 viction thereof be fined not more than \$30,000 for each



1 violation, or 3 times that amount for each day of a con-  
2 tinuing violation, in lieu of the fine provided by section  
3 501 for such a violation. This subsection does not super-  
4 sede the provisions of section 501 relating to imprison-  
5 ment or the imposition of a penalty of both fine and im-  
6 prisonment.”.

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

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

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

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

20 (4) by inserting “or provider” after “carrier” in  
21 subsection (d)(2), paragraphs (1)(A) and (B) and  
22 (3)(A) and (B) of subsection (i) (as redesignated);

23 (5) by inserting “or providers” after “carriers”  
24 in subsection (d)(2); and

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

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

7           “(8) IP-ENABLED VOICE SERVICE.—The term  
8       ‘IP-enabled voice service’ means the provision of  
9       real-time 2-way voice communications offered to the  
10      public, or such classes of users as to be effectively  
11      available to the public, transmitted through cus-  
12      tomer premises equipment using TCP/IP protocol,  
13      or a successor protocol, for a fee (whether part of  
14      a bundle of services or separately) with interconnec-  
15      tion capability such that the service can originate  
16      traffic to, or terminate traffic from, the public  
17      switched telephone network.”.

18      (d) TELECOMMUNICATIONS CARRIER AND IP-EN-  
19      ABLED VOICE SERVICE PROVIDER NOTIFICATION RE-  
20      QUIREMENT.—Section 222 of the Communications Act of  
21      1934 (47 U.S.C. 222), is further amended—

22           (1) by redesignating subsection (h) as sub-  
23      section (i); and

24           (2) by inserting after subsection (g) the fol-  
25      lowing new subsection:

1       “(h) NOTICE OF VIOLATIONS.—The Commission  
2 shall by regulation require each telecommunications car-  
3 rier or IP-enabled voice service provider to notify a cus-  
4 tomer within 14 calendar days of any incident of which  
5 such telecommunications carrier or IP-enabled voice serv-  
6 ice provider becomes or is made aware in which customer  
7 proprietary network information relating to such customer  
8 is disclosed to someone other than the customer in viola-  
9 tion of this section or section 2 of the Protecting Con-  
10 sumer Phone Records Act.”.

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

12       (a) IN GENERAL.—Except as provided in sections 6  
13 and 7 of this Act, section 2 of this Act shall be enforced  
14 by the Federal Trade Commission.

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

20       (c) ACTIONS BY THE COMMISSION.—The Commission  
21 shall prevent any person from violating this Act in the  
22 same manner, by the same means, and with the same ju-  
23 risdiction, powers, and duties as though all applicable  
24 terms and provisions of the Federal Trade Commission  
25 Act (15 U.S.C. 41 et seq.) were incorporated into and

1 made a part of this Act. Any person that violates section  
2 2 is subject to the penalties and entitled to the privileges  
3 and immunities provided in the Federal Trade Commis-  
4 sion Act in the same manner, by the same means, and  
5 with the same jurisdiction, powers, and duties as though  
6 all applicable terms and provisions of the Federal Trade  
7 Commission Act were incorporated into and made a part  
8 of this Act.

9 **SEC. 6. CONCURRENT ENFORCEMENT BY FEDERAL COM-**  
10 **MUNICATIONS COMMISSION.**

11 (a) IN GENERAL.—The Federal Communications  
12 Commission shall have concurrent jurisdiction to enforce  
13 section 2.

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

16 (1) a violation of section 2 of this Act is  
17 deemed to be a violation of a provision of the Com-  
18 munications Act of 1934 (47 U.S.C. 151 et seq.)  
19 rather than a violation of the Federal Trade Com-  
20 mission Act; and

21 (2) the provisions of section 509(a)(2), (3), and  
22 (4) of the Communications Act of 1934 shall apply  
23 to the imposition and collection of the civil penalty  
24 imposed by section 2 of this Act as if it were the

1 civil penalty imposed by section 509(a)(1) of that  
2 Act.

3 **SEC. 7. ENFORCEMENT BY STATES.**

4 (a) IN GENERAL.—The chief legal officer of a State  
5 may bring a civil action, as *parens patriae*, on behalf of  
6 the residents of that State in an appropriate district court  
7 of the United States to enforce section 2 or to impose the  
8 civil penalties for violation of that section, whenever the  
9 chief legal officer of the State has reason to believe that  
10 the interests of the residents of the State have been or  
11 are being threatened or adversely affected by a violation  
12 of this Act or a regulation under this Act.

13 (b) NOTICE.—The chief legal officer of a State shall  
14 serve written notice on the Federal Trade Commission and  
15 the Federal Communications Commission of any civil ac-  
16 tion under subsection (a) prior to initiating such civil ac-  
17 tion. The notice shall include a copy of the complaint to  
18 be filed to initiate such civil action, except that if it is  
19 not feasible for the State to provide such prior notice, the  
20 State shall provide such notice immediately upon insti-  
21 tuting such civil action.

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

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

3           (2) file petitions for appeal of a decision in such  
4           civil action.

5           (d) CONSTRUCTION.—For purposes of bringing any  
6           civil action under subsection (a), nothing in this section  
7           shall prevent the chief legal officer of a State from exer-  
8           cising the powers conferred on that officer by the laws of  
9           such State to conduct investigations or to administer oaths  
10          or affirmations or to compel the attendance of witnesses  
11          or the production of documentary and other evidence.

12          (e) VENUE; SERVICE OF PROCESS.—

13           (1) VENUE.—An action brought under sub-  
14          section (a) shall be brought in a district court of the  
15          United States that meets applicable requirements re-  
16          lating to venue under section 1391 of title 28,  
17          United States Code.

18           (2) SERVICE OF PROCESS.—In an action  
19          brought under subsection (a)—

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

23           (B) a person who participated in an al-  
24          leged violation that is being litigated in the civil

1           action may be joined in the civil action without  
2           regard to the residence of the person.

3           (f) **LIMITATION ON STATE ACTION WHILE FEDERAL**  
4 **ACTION IS PENDING.**—If either Commission has insti-  
5 tuted an enforcement action or proceeding for violation of  
6 section 2 of this Act, the chief legal officer of the State  
7 in which the violation occurred may not bring an action  
8 under this section during the pendency of the proceeding  
9 against any person with respect to whom the Commission  
10 has instituted the proceeding.

11 **SEC. 8. PREEMPTION OF STATE LAW.**

12           (a) **PREEMPTION.**—Section 2 and the regulations  
13 prescribed pursuant to section 3 of this Act and section  
14 222 of the Communications Act of 1934 (47 U.S.C. 222)  
15 and the regulations prescribed thereunder preempt any—

16           (1) statute, regulation, or rule of any State or  
17           political subdivision thereof that requires a tele-  
18           communications carrier or provider of IP-enabled  
19           voice service to develop, implement, or maintain pro-  
20           cedures for protecting the confidentiality of customer  
21           proprietary network information (as defined in sec-  
22           tion 222(i)(1) of the Communications Act of 1934  
23           (47 U.S.C. 222(i)(1))) held by that telecommuni-  
24           cations carrier or provider of IP-enabled voice serv-  
25           ice, or that restricts or regulates a carrier’s or pro-

1 vider's ability to use, disclose, or permit access to  
2 such information; and

3 (2) any such statute, regulation, or rule, or ju-  
4 dicial precedent of any State court under which li-  
5 ability is imposed on a telecommunications carrier or  
6 provider of IP-enabled voice service for failure to  
7 comply with any statute, regulation, or rule de-  
8 scribed in paragraph (1) or with the requirements of  
9 section 2 or the regulations prescribed pursuant to  
10 section 3 of this Act or with section 222 of the Com-  
11 munications Act of 1934 or the regulations pre-  
12 scribed thereunder.

13 (b) LIMITATION ON PREEMPTION.—This Act shall  
14 not be construed to preempt the applicability of—

15 (1) State laws that are not specific to the mat-  
16 ters described in subsection (a), including State con-  
17 tract or tort law; or

18 (2) other State laws to the extent those laws re-  
19 late to acts of fraud or computer crime.

20 **SEC. 9. CONSUMER OUTREACH AND EDUCATION.**

21 (a) IN GENERAL.—Within 180 days after the date  
22 of enactment of this Act, the Federal Trade Commission  
23 and Federal Communications Commission shall jointly es-  
24 tablish and implement a media and distribution campaign  
25 to teach the public about the protection afforded customer



1 proprietary network information under this Act, the Fed-  
2 eral Trade Commission Act and the Communications Act  
3 of 1934.

4 (b) CAMPAIGN REQUIREMENTS.—The campaign  
5 shall—

6 (1) promote understanding of—

7 (A) the problem concerning the theft and  
8 misuse of customer proprietary network infor-  
9 mation;

10 (B) available methods for consumers to  
11 protect their customer proprietary network in-  
12 formation; and

13 (C) efforts undertaken by the Federal  
14 Trade Commission and the Federal Commu-  
15 nications Commission to prevent the problem  
16 and seek redress where a breach of security in-  
17 volving customer proprietary network informa-  
18 tion has occurred; and

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

○