

# Calendar No. 425

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

# S. 2389

[Report No. 109-253]

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, Mr. THUNE, Mrs. HUTCHISON, Mr. BURR, and Mr. CHAMBLISS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

MAY 9, 2006

Reported by Mr. STEVENS, with an amendment

[Strike all after the enacting clause and insert the part printed in italic]

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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,*

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

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

4 (b) **TABLE OF CONTENTS.**—The table of contents for  
5 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.

6 **SEC. 2. UNAUTHORIZED ACQUISITION, USE, OR SALE OF**  
7 **CONFIDENTIAL CUSTOMER PROPRIETARY**  
8 **NETWORK TELEPHONE INFORMATION.**

9 (a) **IN GENERAL.**—It is unlawful for any person—  
10 (1) to acquire or use the customer proprietary  
11 network information of another person without that  
12 person’s affirmative written consent;  
13 (2) to misrepresent that another person has  
14 consented to the acquisition or use of such other  
15 person’s customer proprietary network information  
16 in order to acquire such information;  
17 (3) to obtain unauthorized access to the data  
18 processing system or records of a telecommuni-  
19 cations carrier or an IP-enabled voice service pro-  
20 vider in order to acquire the customer proprietary  
21 network information of 1 or more other persons;

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

3           (5) to request that another person obtain cus-  
4           tomer proprietary network information from a tele-  
5           communications carrier or IP-enabled voice service  
6           provider, knowing that the other person will obtain  
7           the information from such carrier or provider in any  
8           manner that is unlawful under subsection (a).

9           (b) EXCEPTIONS.—

10           (1) EXISTING PRACTICES PERMITTED.—Noth-  
11           ing in subsection (a) prohibits any practice per-  
12           mitted by section 222 of the Communications Act of  
13           1934 (47 U.S.C. 222), or otherwise authorized by  
14           law, as of the date of enactment of this Act.

15           (2) CALLER ID.—Nothing in subsection (a) pro-  
16           hibits the use of caller identification services by any  
17           person to identify the originator of telephone calls  
18           received by that person.

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

20           (1) IN GENERAL.—A telecommunications ear-  
21           rier or IP-enabled voice service provider may bring  
22           a civil action in an appropriate State court, or in  
23           any United States district court that meets applica-  
24           ble requirements relating to venue under section  
25           1391 of title 28, United States Code—

1           (A) based on a violation of this section or  
2           the regulations prescribed under this section to  
3           enjoin such violation;

4           (B) to recover for actual monetary loss  
5           from such a violation, or to receive \$11,000 in  
6           damages for each such violation, whichever is  
7           greater; or

8           (C) both.

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

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

22          (d) CIVIL PENALTY.—

23               (1) IN GENERAL.—Any person who violates this  
24               section shall be subject to a civil penalty of not more  
25               than \$11,000 for each violation or each day of a

1 continuing violation, except that the amount as-  
2 sessed for any continuing violation shall not exceed  
3 a total of \$11,000,000 for any single act or failure  
4 to act.

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

11 (e) LIMITATION.—Nothing in this Act or section 222  
12 of the Communications Act of 1934 (47 U.S.C. 222) au-  
13 thORIZES a subscriber to bring a civil action against a tele-  
14 communications carrier or an IP-enabled voice service pro-  
15 vider.

16 (f) DEFINITIONS.—In this section:

17 (1) CUSTOMER PROPRIETARY NETWORK INFOR-  
18 MATION.—The term “customer proprietary network  
19 information” has the meaning given that term by  
20 section 222(i)(1) of the Communications Act of  
21 1934 (47 U.S.C. 222(i)(1)).

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

1           ~~(3)~~ TELECOMMUNICATIONS CARRIER.—The  
2 term “telecommunications carrier” has the meaning  
3 given it by section ~~3~~(44) of the Communications Act  
4 of 1934 (47 U.S.C. ~~3~~(44)).

5 **SEC. 3. ENHANCED CONFIDENTIALITY PROCEDURES.**

6           ~~(a)~~ IN GENERAL.—Within 180 days after the date  
7 of enactment of this Act, the Federal Communications  
8 Commission shall—

9           ~~(1)~~ revise or supplement its regulations, to the  
10 extent the Commission determines it is necessary, to  
11 require a telecommunications carrier or IP-enabled  
12 voice service provider—

13           ~~(A)~~ to ensure the security and confiden-  
14 tiality of customer proprietary network informa-  
15 tion (as defined in section ~~222~~(i)(1) of the  
16 Communications Act of 1934 (47 U.S.C.  
17 ~~222~~(i)(1))),

18           ~~(B)~~ to protect such customer proprietary  
19 network information against threats or hazards  
20 to its security or confidentiality; and

21           ~~(C)~~ to protect customer proprietary net-  
22 work information from unauthorized access or  
23 use that could result in substantial harm or in-  
24 convenience to its customers; and

1           (2) ensure that any revised or supplemental  
 2 regulations are similar in scope and structure to the  
 3 Federal Trade Commission's regulations in part 314  
 4 of title 16, Code of Federal Regulations, taking into  
 5 consideration the differences between financial infor-  
 6 mation and customer proprietary network informa-  
 7 tion.

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

15 **SEC. 4. PENALTIES; EXTENSION OF CONFIDENTIALITY RE-**  
 16 **QUIREMENTS TO OTHER ENTITIES.**

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

20 **“SEC. 509. PENALTIES FOR CONFIDENTIAL CUSTOMER PRO-**  
 21 **PRIETARY NETWORK INFORMATION VIOLA-**  
 22 **TIONS.**

23           “(a) CIVIL FORFEITURE.—

24           “(1) IN GENERAL.—Any telecommunications  
 25 carrier or IP-enabled voice service provider that is

1 determined by the Commission, in accordance with  
2 paragraphs (3) and (4) of section 503(b), to have  
3 violated section 222 of this Act shall be liable to the  
4 United States for a forfeiture penalty. A forfeiture  
5 penalty under this subsection shall be in addition to  
6 any other penalty provided for by this Act. The  
7 amount of the forfeiture penalty determined under  
8 this subsection shall not exceed \$30,000 for each  
9 violation, or 3 times that amount for each day of a  
10 continuing violation, except that the amount as-  
11 sessed for any continuing violation shall not exceed  
12 a total of \$3,000,000 for any single act or failure to  
13 act.

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

17 “(3) PROCEDURE.—No forfeiture liability shall  
18 be determined under paragraph (1) against any per-  
19 son unless such person receives the notice required  
20 by section 503(b)(3) or section 503(b)(4) of this  
21 Act.

22 “(4) 2-YEAR STATUTE OF LIMITATIONS.—No  
23 forfeiture penalty shall be determined or imposed  
24 against any person under paragraph (1) if the viola-  
25 tion charged occurred more than 2 years prior to the



1 date of issuance of the required notice or notice or  
 2 apparent liability.

3 “(b) ~~CRIMINAL FINE.~~—Any person who willfully and  
 4 knowingly violates section ~~222~~ of this Act shall upon con-  
 5 viction thereof be fined not more than \$30,000 for each  
 6 violation, or ~~3~~ times that amount for each day of a con-  
 7 tinuing violation, in lieu of the fine provided by section  
 8 ~~501~~ for such a violation. This subsection does not super-  
 9 sede the provisions of section ~~501~~ relating to imprison-  
 10 ment or the imposition of a penalty of both fine and im-  
 11 prisonment.”.

12 (b) ~~EXTENSION OF CONFIDENTIALITY REQUIRE-~~  
 13 ~~MENTS TO IP-ENABLED VOICE SERVICE PROVIDERS.—~~  
 14 Section ~~222~~ of the Communications Act of 1934 (47  
 15 U.S.C. ~~222~~) is amended—

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

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

21 (3) by striking “telecommunication carriers”  
 22 each place it appears in subsection (a) and inserting  
 23 “telecommunications carriers or IP-enabled voice  
 24 service providers”;

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

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

6           (6) by inserting “AND IP-ENABLED VOICE  
 7           SERVICE PROVIDER” after “CARRIER” in the cap-  
 8           tion of subsection (e).

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

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

23          (d) TELECOMMUNICATIONS CARRIER AND IP-EN-  
 24          ABLED VOICE SERVICE PROVIDER NOTIFICATION RE-

1 REQUIREMENT.—Section 222 of the Communications Act of  
 2 1934 (47 U.S.C. 222), is further amended—

3           (1) by redesignating subsection (h) as sub-  
 4           section (i); and

5           (2) by inserting after subsection (g) the fol-  
 6           lowing new subsection:

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

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

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

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

1           (c) **ACTIONS BY THE COMMISSION.**—The Commission  
 2 shall prevent any person from violating this Act in the  
 3 same manner, by the same means, and with the same ju-  
 4 risdiction, powers, and duties as though all applicable  
 5 terms and provisions of the Federal Trade Commission  
 6 Act (~~15~~ U.S.C. 41 et seq.) were incorporated into and  
 7 made a part of this Act. Any person that violates section  
 8 2 is subject to the penalties and entitled to the privileges  
 9 and immunities provided in the Federal Trade Commis-  
 10 sion Act in the same manner, by the same means, and  
 11 with the same jurisdiction, powers, and duties as though  
 12 all applicable terms and provisions of the Federal Trade  
 13 Commission Act were incorporated into and made a part  
 14 of this Act.

15 **SEC. 6. CONCURRENT ENFORCEMENT BY FEDERAL COM-**  
 16 **MUNICATIONS COMMISSION.**

17           (a) **IN GENERAL.**—The Federal Communications  
 18 Commission shall have concurrent jurisdiction to enforce  
 19 section 2.

20           (b) **PENALTY; PROCEDURE.**—For purposes of en-  
 21 forcement of that section by the Commission—

22               (1) a violation of section 2 of this Act is  
 23 deemed to be a violation of a provision of the Com-  
 24 munications Act of 1934 (~~47~~ U.S.C. 151 et seq.)

1       rather than a violation of the Federal Trade Com-  
2       mission Act; and

3               (2) the provisions of section 509(a)(2), (3), and  
4       (4) of the Communications Act of 1934 shall apply  
5       to the imposition and collection of the civil penalty  
6       imposed by section 2 of this Act as if it were the  
7       civil penalty imposed by section 509(a)(1) of that  
8       Act.

9       **SEC. 7. ENFORCEMENT BY STATES.**

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

19       (b) **NOTICE.**—The chief legal officer of a State shall  
20       serve written notice on the Federal Trade Commission and  
21       the Federal Communications Commission of any civil ac-  
22       tion under subsection (a) prior to initiating such civil ac-  
23       tion. The notice shall include a copy of the complaint to  
24       be filed to initiate such civil action, except that if it is  
25       not feasible for the State to provide such prior notice, the

1 State shall provide such notice immediately upon insti-  
2 tuting such civil action.

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

6 (1) ~~be heard on all matters arising in such civil~~  
7 ~~action; and~~

8 (2) ~~file petitions for appeal of a decision in such~~  
9 ~~civil action.~~

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

17 (e) ~~VENUE; SERVICE OF PROCESS.~~—

18 (1) ~~VENUE.~~—An action brought under sub-  
19 section (a) shall be brought in a district court of the  
20 United States that meets applicable requirements re-  
21 lating to venue under section 1391 of title 28,  
22 United States Code.

23 (2) ~~SERVICE OF PROCESS.~~—In an action  
24 brought under subsection (a)—

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

4           (B) a person who participated in an al-  
5           leged violation that is being litigated in the civil  
6           action may be joined in the civil action without  
7           regard to the residence of the person.

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

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

17           (a) **PREEMPTION.**—Section 2 and the regulations  
18 prescribed pursuant to section 3 of this Act and section  
19 222 of the Communications Act of 1934 (47 U.S.C. 222)  
20 and the regulations prescribed thereunder preempt any—

21           (1) statute, regulation, or rule of any State or  
22           political subdivision thereof that requires a tele-  
23           communications carrier or provider of IP-enabled  
24           voice service to develop, implement, or maintain pro-  
25           cedures for protecting the confidentiality of customer

1 proprietary network information (as defined in sec-  
2 tion 222(i)(1) of the Communications Act of 1934  
3 (47 U.S.C. 222(i)(1))) held by that telecommuni-  
4 cations carrier or provider of IP-enabled voice serv-  
5 ice; or that restricts or regulates a carrier's or pro-  
6 vider's ability to use, disclose, or permit access to  
7 such information; and

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

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

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

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



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

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

10 (b) ~~CAMPAIGN REQUIREMENTS.~~—The campaign  
11 shall—

12 (1) ~~promote understanding of—~~

13 (A) ~~the problem concerning the theft and~~  
14 ~~misuse of customer proprietary network infor-~~  
15 ~~mation;~~

16 (B) ~~available methods for consumers to~~  
17 ~~protect their customer proprietary network in-~~  
18 ~~formation; and~~

19 (C) ~~efforts undertaken by the Federal~~  
20 ~~Trade Commission and the Federal Commu-~~  
21 ~~nications Commission to prevent the problem~~  
22 ~~and seek redress where a breach of security in-~~  
23 ~~volving customer proprietary network informa-~~  
24 ~~tion has occurred; and~~

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

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

2 (a) *SHORT TITLE.*—*This Act may be cited as the “Pro-*  
 3 *tecting Consumer Phone Records Act”.*

4 (b) *TABLE OF CONTENTS.*—*The table of contents for*  
 5 *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.*

6 **SEC. 2. UNAUTHORIZED ACQUISITION, USE, OR SALE OF**

7 **CONFIDENTIAL CUSTOMER PROPRIETARY**

8 **NETWORK TELEPHONE INFORMATION.**

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

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

16 (2) *to misrepresent that another person has con-*  
 17 *sented to the acquisition or use of such other person’s*  
 18 *customer proprietary network information in order to*  
 19 *acquire such information;*

20 (3) *to obtain unauthorized access to the data*  
 21 *processing system or records of a telecommunications*

1 carrier or an IP-enabled voice service provider in  
2 order to acquire the customer proprietary network in-  
3 formation of 1 or more other persons;

4 (4) to sell, or offer for sale, customer proprietary  
5 network information; or

6 (5) to request that another person obtain cus-  
7 tomer proprietary network information from a tele-  
8 communications carrier or IP-enabled voice service  
9 provider, knowing that the other person will obtain  
10 the information from such carrier or provider in any  
11 manner that is unlawful under subsection (a).

12 (b) EXCEPTIONS.—

13 (1) APPLICATION WITH SECTION 222 OF COMMU-  
14 NICATIONS ACT OF 1934.—This Act does not prohibit  
15 a telecommunications carrier or an IP-enabled voice  
16 service provider or any third party that lawfully ob-  
17 tains such information from a carrier or provider  
18 from engaging in any act or practice that was not  
19 prohibited by section 222 of the Communications Act  
20 of 1934 (47 U.S.C. 222) or regulations that are con-  
21 sistent with the provisions of section 222, as that sec-  
22 tion and those regulations were in effect on the day  
23 before the date of enactment of this Act.

24 (2) APPLICATION OF OTHER LAWS.—This Act  
25 does not prohibit any act or practice otherwise au-

1 *thorized by law, including any lawfully authorized*  
2 *investigative, protective, or intelligence activity of a*  
3 *law enforcement agency or the United States, a State,*  
4 *or a political subdivision of a State, or an intel-*  
5 *ligence agency of the United States.*

6 (3) *TREATMENT OF IP-ENABLED VOICE SERVICE*  
7 *PROVIDERS.—For purposes of this section, an IP-en-*  
8 *abled voice service provider shall be treated as if it*  
9 *were a telecommunications carrier covered by section*  
10 *222 of the Communications Act of 1934 (47 U.S.C.*  
11 *222) before the date of enactment of this Act.*

12 (4) *CALLER ID.—Nothing in this Act prohibits*  
13 *the use of caller identification services by any person*  
14 *to identify the originator of telephone calls received by*  
15 *that person.*

16 (c) *PRIVATE RIGHT OF ACTION FOR PROVIDERS.—*

17 (1) *IN GENERAL.—A telecommunications carrier*  
18 *or IP-enabled voice service provider may bring a civil*  
19 *action in an appropriate State court, or in any*  
20 *United States district court that meets applicable re-*  
21 *quirements relating to venue under section 1391 of*  
22 *title 28, United States Code, or for any judicial dis-*  
23 *trict in which the carrier or service provider resides*  
24 *or conducts business—*

1           (A) based on a violation of this section or  
2           the regulations prescribed under this section to  
3           enjoin such violation;

4           (B) to recover for actual monetary loss from  
5           such a violation, or to receive \$11,000 in dam-  
6           ages for each such violation, whichever is greater;  
7           or

8           (C) both.

9           (2) *TREBLE DAMAGES.*—If the court finds that  
10          the defendant willfully or knowingly violated this sec-  
11          tion or the regulations prescribed under this section,  
12          the court may, in its discretion, increase the amount  
13          of the award to an amount equal to not more than  
14          3 times the amount available under paragraph (1) of  
15          this subsection.

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

21          (d) *PRIVATE RIGHT OF ACTION FOR CONSUMERS.*—

22                 (1) *IN GENERAL.*—An individual who has been  
23                 caused harm as a result of their confidential propri-  
24                 etary network information being obtained, used, or  
25                 sold in violation of this section may file a civil action

1        *in any court of competent jurisdiction against the*  
2        *person who caused the harm as a result of a violation*  
3        *of this section.*

4            (2) *REMEDIES.*—*A court in which such civil ac-*  
5        *tion has been brought may award damages of not*  
6        *more than \$11,000 for each violation of this section*  
7        *with respect to the plaintiff's customer proprietary*  
8        *network information and provide such additional re-*  
9        *lief as the court deems appropriate, including the*  
10       *award of court costs, investigative costs, and reason-*  
11       *able attorney's fees.*

12           (3) *TREBLE DAMAGES.*—*If the court finds that*  
13        *the defendant willfully or knowingly violated this sec-*  
14        *tion or the regulations prescribed under this section,*  
15        *the court may, in its discretion, increase the amount*  
16        *of the award to not more than 3 times the damages*  
17        *determined by the court under paragraph (2).*

18           (4) *INFLATION ADJUSTMENT.*—*The \$11,000*  
19        *amount in paragraph (2) shall be adjusted for infla-*  
20        *tion as if it were a civil monetary penalty, as defined*  
21        *in section 3 (2) of the Federal Civil Penalties Infla-*  
22        *tion Adjustment Act of 1996 (28 USC 2461 note).*

23        (e) *CIVIL PENALTY.*—

24           (1) *IN GENERAL.*—*Any person who violates this*  
25        *section shall be subject to a civil penalty of not more*

1        *than \$11,000 for each violation or each day of a con-*  
2        *tinuing violation, except that the amount assessed for*  
3        *any continuing violation shall not exceed a total of*  
4        *\$11,000,000 for any single act or failure to act.*

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

11          (f) *LIMITATION.—Nothing in this Act or section 222*  
12       *of the Communications Act of 1934 (47 U.S.C. 222) author-*  
13       *izes a subscriber to bring a civil action against a tele-*  
14       *communications carrier or an IP-enabled voice service pro-*  
15       *vider.*

16          (g) *DEFINITIONS.—In this section:*

17            (1) *CUSTOMER PROPRIETARY NETWORK INFOR-*  
18        *MATION.—The term “customer proprietary network*  
19        *information” has the meaning given that term by sec-*  
20        *tion 222(i)(1) of the Communications Act of 1934 (47*  
21        *U.S.C. 222(i)(1)).*

22            (2) *IP-ENABLED VOICE SERVICE.—The term “IP-*  
23        *enabled voice service” has the meaning given that*  
24        *term by section 222(i)(8) of the Communications Act*  
25        *of 1934 (47 U.S.C. 222(i)(8)).*

1           (3) *TELECOMMUNICATIONS CARRIER.*—*The term*  
2           *“telecommunications carrier” has the meaning given*  
3           *it by section 3(44) of the Communications Act of 1934*  
4           *(47 U.S.C. 3(44)).*

5 **SEC. 3. ENHANCED CONFIDENTIALITY PROCEDURES.**

6           (a) *IN GENERAL.*—*Within 180 days after the date of*  
7           *enactment of this Act, the Federal Communications Com-*  
8           *mission shall—*

9                   (1) *revise or supplement its regulations, to the*  
10           *extent the Commission determines it is necessary, to*  
11           *require a telecommunications carrier or IP-enabled*  
12           *voice service provider to protect—*

13                           (A) *the security and confidentiality of cus-*  
14                           *tomers proprietary network information (as de-*  
15                           *defined in section 222(i)(1) of the Communications*  
16                           *Act of 1934 (47 U.S.C. 222(i)(1))); and*

17                           (B) *customer proprietary network informa-*  
18                           *tion against any anticipated threats or hazards*  
19                           *to its security or confidentiality; and*

20                           (C) *customer proprietary network informa-*  
21                           *tion from unauthorized access or use that could*  
22                           *result in substantial harm or inconvenience to*  
23                           *its customers; and*

24                           (2) *ensure that any revised or supplemental reg-*  
25           *ulations are similar in scope and structure to the*



1       *Federal Trade Commission’s regulations in part 314*  
2       *of title 16, Code of Federal Regulations, as such regu-*  
3       *lations are in effect on the date of enactment of this*  
4       *Act, taking into consideration the differences between*  
5       *financial information and customer proprietary net-*  
6       *work information.*

7       **(b) COMPLIANCE CERTIFICATION.**—*Each telecommuni-*  
8       *cations carrier and IP-enabled voice service provider to*  
9       *which the regulations under subsection (a) and section 222*  
10      *of the Communications Act of 1934 (47 U.S.C. 222) apply*  
11      *shall file with the Commission annually a certification that,*  
12      *for the period covered by the filing, it has been in compli-*  
13      *ance with those requirements.*

14      **SEC. 4. PENALTIES; EXTENSION OF CONFIDENTIALITY RE-**  
15                                      **QUIREMENTS TO OTHER ENTITIES.**

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

19      **“SEC. 509. PENALTIES FOR CONFIDENTIAL CUSTOMER PRO-**  
20                                      **PRIETARY NETWORK INFORMATION VIOLA-**  
21                                      **TIONS.**

22      **“(a) CIVIL FORFEITURE.**—

23                      **“(1) IN GENERAL.**—*Any person determined by*  
24      *the Commission, in accordance with paragraphs (3)*  
25      *and (4) of section 503(b), to have violated section 2*

1       of the Protecting Consumer Phone Records Act shall  
2       be liable to the United States for a forfeiture penalty.  
3       A forfeiture penalty under this subsection shall be in  
4       addition to any other penalty provided for by this  
5       Act. The amount of the forfeiture penalty determined  
6       under this subsection shall not exceed \$30,000 for each  
7       violation, or 3 times that amount for each day of a  
8       continuing violation, except that the amount assessed  
9       for any continuing violation shall not exceed a total  
10      of \$3,000,000 for any single act or failure to act.

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

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

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

24           “(b) *CRIMINAL FINE*.—Any person who willfully and  
25      knowingly violates section 2 of the Protecting Consumer

1 *Phone Records Act shall upon conviction thereof be fined*  
 2 *not more than \$30,000 for each violation, or 3 times that*  
 3 *amount for each day of a continuing violation, in lieu of*  
 4 *the fine provided by section 501 for such a violation. This*  
 5 *subsection does not supersede the provisions of section 501*  
 6 *relating to imprisonment or the imposition of a penalty*  
 7 *of both fine and imprisonment.”.*

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

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

15 (2) *by inserting “or IP-enabled voice service pro-*  
 16 *vider” after “exchange service” in subsection (g);*

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

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

24 (5) *by inserting “or provider-customer” after*  
 25 *“carrier-customer” in subsection (h)(1)(A);*

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

3           (7) by inserting “AND IP-ENABLED VOICE SERV-  
4           ICE PROVIDER” after “CARRIER” in the caption of  
5           subsection (b);

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

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

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

15          (c) *DEFINITION.*—Section 222(h) of the Communica-  
16          tions Act of 1934 (47 U.S.C. 222(h)) is amended by adding  
17          at the end the following:

18                 “(8) *IP-ENABLED VOICE SERVICE.*—The term  
19                 ‘IP-enabled voice service’ means the provision of real-  
20                 time 2-way voice communications offered to the pub-  
21                 lic, or such classes of users as to be effectively avail-  
22                 able to the public, transmitted through customer  
23                 premises equipment using TCP/IP protocol, or a suc-  
24                 cessor protocol, for a fee (whether part of a bundle of  
25                 services or separately) with interconnection capability

1       *such that the service can originate traffic to, or termi-*  
 2       *nate traffic from, the public switched telephone net-*  
 3       *work.”.*

4       *(d) TELECOMMUNICATIONS CARRIER AND IP-ENABLED*  
 5       *VOICE SERVICE PROVIDER NOTIFICATION REQUIRE-*  
 6       *MENT.—Section 222 of the Communications Act of 1934 (47*  
 7       *U.S.C. 222), is further amended—*

8               *(1) by redesignating subsection (h) as subsection*  
 9       *(i);*

10              *(2) by inserting after subsection (g) the following*  
 11       *new subsection:*

12       “*(h) NOTICE OF VIOLATIONS.—*

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

22               “*(2) LAW ENFORCEMENT AND HOMELAND SECU-*  
 23       *RITY RELATED DELAYS.—Notwithstanding paragraph*  
 24       *(1), a telecommunications carrier or IP-enabled voice*

1       *service provider may delay the required notification*  
 2       *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  
 6               or 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-en-  
 16              abled voice service.”.

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

20              “(B) such person does not hold a broadcast  
 21              station license issued under title III of this Act  
 22              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 required  
7                   notice or notice of apparent liability.”.

8           (f) *APPLICATION OF CABLE SUBSCRIBER PRIVACY*  
9 *RULES TO IP-ENABLED VOICE SERVICE PROVIDERS.*—Sec-  
10 *tion 631 of the Communications Act of 1934 (47 U.S.C.*  
11 *551) is amended by adding at the end the following:*

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

20           (g) *CONSUMER CONTROL OF WIRELESS PHONE NUM-*  
21 *BERS.*—*Section 222 of the Communications Act of 1934 (47*  
22 *U.S.C. 222), as amended by subsection (d), is further*  
23 *amended by adding at the end the following:*

24           “(j) *WIRELESS CONSUMER PRIVACY PROTECTION.*—

1           “(1) *IN GENERAL.*—A provider of commercial  
2           mobile services, or any direct or indirect affiliate or  
3           agent of such a provider, may not include the wireless  
4           telephone number information of any subscriber in  
5           any wireless directory assistance service database un-  
6           less the mobile service provider—

7                   “(A) provides a conspicuous, separate notice  
8                   to the subscriber informing the subscriber of the  
9                   right not to be listed in any wireless directory  
10                  assistance service; and

11                  “(B) obtains express prior authorization for  
12                  listing from such subscriber, separate from any  
13                  authorization obtained to provide such subscriber  
14                  with commercial mobile service, or any calling  
15                  plan or service associated with such commercial  
16                  mobile service, and such authorization has not  
17                  been subsequently withdrawn.

18           “(2) *COST-FREE DE-LISTING.*—A provider of  
19           commercial mobile services, or any direct or indirect  
20           affiliate or agent of such a provider, shall remove the  
21           wireless telephone number information of any sub-  
22           scriber from any wireless directory assistance service  
23           database upon request by that subscriber and without  
24           any cost to the subscriber.



1           “(3) *PUBLICATION OF DIRECTORIES PROHIB-*  
2           *ITED.—A provider of commercial mobile services, or*  
3           *any direct or indirect affiliate or agent of such a pro-*  
4           *vider, may not publish, in printed, electronic, or other*  
5           *form, or sell or otherwise disseminate, the contents of*  
6           *any wireless directory assistance service database, or*  
7           *any portion or segment thereof unless the mobile serv-*  
8           *ice provider—*

9                   “(A) *provides a conspicuous, separate notice*  
10           *to the subscriber informing the subscriber of the*  
11           *right not to be listed; and*

12                   “(B) *obtains express prior authorization for*  
13           *listing from such subscriber, separate from any*  
14           *authorization obtained to provide such subscriber*  
15           *with commercial mobile service, or any calling*  
16           *plan or service associated with such commercial*  
17           *mobile service, and such authorization has not*  
18           *been subsequently withdrawn.*

19           “(4) *NO CONSUMER FEE FOR RETAINING PRI-*  
20           *VACY.—A provider of commercial mobile services may*  
21           *not charge any subscriber for exercising any of the*  
22           *rights described under this subsection.*

23           “(5) *STATE AND LOCAL LAWS PRE-EMPTED.—To*  
24           *the extent that any State or local government imposes*  
25           *requirements on providers of commercial mobile serv-*

1        *ices, or any direct or indirect affiliate or agent of*  
 2        *such providers, that are inconsistent with the require-*  
 3        *ments of this subsection, this subsection preempts such*  
 4        *State or local requirements.*

5            *“(6) DEFINITIONS.—In this subsection:*

6            *“(A) WIRELESS TELEPHONE NUMBER IN-*  
 7            *FORMATION.—The term ‘wireless telephone num-*  
 8            *ber information’ means the telephone number,*  
 9            *electronic address, and any other identifying in-*  
 10          *formation by which a calling party may reach*  
 11          *a subscriber to commercial mobile services, and*  
 12          *which is assigned by a commercial mobile service*  
 13          *provider to such subscriber, and includes the*  
 14          *name and address of such subscriber.*

15          *“(B) WIRELESS DIRECTORY ASSISTANCE*  
 16          *SERVICE.—The term ‘wireless directory assist-*  
 17          *ance service’ means any service for connecting*  
 18          *calling parties to a subscriber of commercial mo-*  
 19          *bile service when such calling parties themselves*  
 20          *do not possess the wireless telephone number in-*  
 21          *formation of such subscriber.”.*

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 entity*

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

4 *(b) VIOLATION TREATED AS AN UNFAIR OR DECEPTIVE*  
5 *ACT OR PRACTICE.—Violation of section 2 shall be treated*  
6 *as an unfair or deceptive act or practice proscribed under*  
7 *a rule issued under section 18(a)(1)(B) of the Federal Trade*  
8 *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 same*  
11 *manner, by the same means, and with the same jurisdic-*  
12 *tion, powers, and duties as though all applicable terms and*  
13 *provisions of the Federal Trade Commission Act (15 U.S.C.*  
14 *41 et seq.) were incorporated into and made a part of this*  
15 *Act. Any person that violates section 2 is subject to the pen-*  
16 *alties and entitled to the privileges and immunities pro-*  
17 *vided in the Federal Trade Commission Act in the same*  
18 *manner, by the same means, and with the same jurisdic-*  
19 *tion, powers, and duties as though all applicable terms and*  
20 *provisions of the Federal Trade Commission Act were incor-*  
21 *porated into and made a part of this Act. Nothing in sec-*  
22 *tion 2(d) of this Act limits any penalty under the Federal*  
23 *Trade Commission Act as that Act is made applicable to*  
24 *violations of section 2 by the preceding sentence.*

1 **SEC. 6. CONCURRENT ENFORCEMENT BY FEDERAL COMMU-**  
2 **NICATIONS COMMISSION.**

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

6 (b) *PENALTY; PROCEDURE.*—*For purposes of enforce-*  
7 *ment of that section by the Commission—*

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

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

17 **SEC. 7. ENFORCEMENT BY STATES.**

18 (a) *IN GENERAL.*—*The chief legal officer of a State,*  
19 *or any other State officer authorized by law to bring actions*  
20 *on behalf of the residents of a State, may bring a civil ac-*  
21 *tion, as parens patriae, on behalf of the residents of that*  
22 *State in an appropriate district court of the United States*  
23 *to enforce section 2 or to impose the civil penalties for viola-*  
24 *tion of that section, whenever the chief legal officer or other*  
25 *State officer has reason to believe that the interests of the*  
26 *residents of the State have been or are being threatened or*

1 *adversely affected by a violation of this Act or a regulation*  
2 *under this Act.*

3       (b) *NOTICE.*—*The chief legal officer or other State offi-*  
4 *cer shall serve written notice on the Federal Trade Commis-*  
5 *sion and the Federal Communications Commission of any*  
6 *civil action under subsection (a) prior to initiating such*  
7 *civil action. The notice shall include a copy of the com-*  
8 *plaint to be filed to initiate such civil action, except that*  
9 *if it is not feasible for the State to provide such prior notice,*  
10 *the State shall provide such notice immediately upon insti-*  
11 *tuting such civil action.*

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

15             (1) *be heard on all matters arising in such civil*  
16 *action; and*

17             (2) *file petitions for appeal of a decision in such*  
18 *civil action.*

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

1 *witnesses or the production of documentary and other evi-*  
2 *dence.*

3 *(e) VENUE; SERVICE OF PROCESS.—*

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

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

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

14 *(B) a person who participated in an alleged*  
15 *violation that is being litigated in the civil ac-*  
16 *tion may be joined in the civil action without re-*  
17 *gard to the residence of the person.*

18 *(f) LIMITATION ON STATE ACTION WHILE FEDERAL*  
19 *ACTION IS PENDING.—If either Commission has instituted*  
20 *an enforcement action or proceeding for violation of section*  
21 *2 of this Act, the chief legal officer or other State officer*  
22 *of the State in which the violation occurred may not bring*  
23 *an action under this section during the pendency of the pro-*  
24 *ceeding against any person with respect to whom the Com-*  
25 *mission has instituted the proceeding.*

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

2 (a) *PREEMPTION.*—Section 2 and the regulations pre-  
3 scribed pursuant to section 3 of this Act and section 222  
4 of the Communications Act of 1934 (47 U.S.C. 222) and  
5 the regulations prescribed thereunder preempt any—

6 (1) *statute, regulation, or rule of any State or*  
7 *political subdivision thereof that requires a tele-*  
8 *communications carrier or provider of IP-enabled*  
9 *voice service to develop, implement, or maintain pro-*  
10 *cedures for protecting the confidentiality of customer*  
11 *proprietary network information (as defined in sec-*  
12 *tion 222(i)(1) of the Communications Act of 1934 (47*  
13 *U.S.C. 222(i)(1))) held by that telecommunications*  
14 *carrier or provider of IP-enabled voice service, or that*  
15 *restricts or regulates a carrier’s or provider’s ability*  
16 *to use, disclose, or permit access to such information;*  
17 *and*

18 (2) *any such statute, regulation, or rule, or judi-*  
19 *cial precedent of any State court under which liabil-*  
20 *ity is imposed on a telecommunications carrier or*  
21 *provider of IP-enabled voice service for failure to com-*  
22 *ply with any statute, regulation, or rule described in*  
23 *paragraph (1) or with the requirements of section 2*  
24 *or the regulations prescribed pursuant to section 3 of*  
25 *this Act or with section 222 of the Communications*  
26 *Act of 1934 or the regulations prescribed thereunder.*

1       (b) *LIMITATION ON PREEMPTION.*—*This Act shall not*  
2 *be construed to preempt the applicability of—*

3           (1) *State laws that are not specific to the mat-*  
4 *ters described in subsection (a), including State con-*  
5 *tract or tort law; or*

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

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

9       (a) *IN GENERAL.*—*Within 180 days after the date of*  
10 *enactment of this Act, the Federal Trade Commission and*  
11 *Federal Communications Commission shall jointly establish*  
12 *and implement a media and distribution campaign to teach*  
13 *the public about the protection afforded customer propri-*  
14 *etary network information under this Act, the Federal*  
15 *Trade Commission Act and the Communications Act of*  
16 *1934.*

17       (b) *CAMPAIGN REQUIREMENTS.*—*The campaign*  
18 *shall—*

19           (1) *promote understanding of—*

20               (A) *the problem concerning the theft and*  
21 *misuse of customer proprietary network informa-*  
22 *tion;*

23               (B) *available methods for consumers to pro-*  
24 *tect their customer proprietary network informa-*  
25 *tion; and*



1                    *(C) efforts undertaken by the Federal Trade*  
2                    *Commission and the Federal Communications*  
3                    *Commission to prevent the problem; and*  
4                    *(2) explore various distribution platforms to ac-*  
5                    *complish the goal set forth in paragraph (1).*

Calendar No. 425

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

**S. 2389**

[Report No. 109-253]

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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.

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MAY 9, 2006

Reported with an amendment