

103^D CONGRESS
1ST SESSION

H. R. 3432

To amend the Communications Act of 1934 to prohibit the disclosure of certain information concerning customer's uses of telephone services, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 3, 1993

Mr. MARKEY (for himself, Mr. KREIDLER, Mr. SYNAR, Mr. BRYANT, and Mr. COOPER) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Communications Act of 1934 to prohibit the disclosure of certain information concerning customer's uses of telephone services, 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.**

4 This Act may be cited as the "Telephone Consumer
5 Privacy Protection Act of 1993".

1 **TITLE I—PRIVACY OF CUS-**
2 **TOMER PROPRIETARY NET-**
3 **WORK INFORMATION**

4 **SEC. 101. AMENDMENT TO THE COMMUNICATIONS ACT OF**
5 **1934.**

6 Title II of the Communications Act of 1934 is
7 amended by adding at the end the following new section:

8 **“SEC. 229. PRIVACY OF CUSTOMER PROPRIETARY NET-**
9 **WORK INFORMATION.**

10 “(a) PRIVACY REQUIREMENTS FOR COMMON CAR-
11 RIERS.—A local exchange carrier—

12 “(1) shall not, except as required by law or
13 upon the affirmative request of the customer to
14 which the information relates—

15 “(A) use customer proprietary network in-
16 formation in the provision of any service other
17 than (i) telephone exchange service or telephone
18 toll service, or (ii) a service necessary to or used
19 in the provision of telephone exchange service
20 or telephone toll service;

21 “(B) use customer proprietary network in-
22 formation in the identification or solicitation of
23 potential customers for any service other than
24 the service from which such information is de-
25 rived;

1 “(C) use such information in the provision
2 of customer premises equipment; or

3 “(D) disclose such information to any affil-
4 iate of such common carrier or any other per-
5 son that is not an employee of such carrier;

6 “(2) shall disclose such information, upon af-
7 firmative written request by the customer, to any
8 person designated by the customer;

9 “(3) shall, whenever such common carrier pro-
10 vides any aggregate information based on customer
11 proprietary network information or any data base or
12 other compilation of customer proprietary informa-
13 tion to any personnel of such common carrier, or
14 any affiliate of such common carrier, that are en-
15 gaged in providing any service that is not necessary
16 to the provision of telephone exchange service, or
17 that are engaged in the provision of customer prem-
18 ises equipment, or to any other person that is not
19 an employee or affiliate of such carrier, notify the
20 Commission of the availability of such aggregate or
21 compiled information and shall provide such aggre-
22 gate or compiled information on reasonable terms
23 and conditions to any other service or equipment
24 provider upon reasonable request therefor; and

1 “(4) shall not discriminate between affiliated
2 and unaffiliated service or equipment providers in
3 providing access to, or in the use and disclosure of,
4 individual and aggregate or compiled information
5 made available consistent with this subsection.

6 “(b) RULE OF CONSTRUCTION.—This section shall
7 not be construed to prohibit the disclosure of customer
8 proprietary network information as necessary—

9 “(1) to render, bill, and collect for telephone ex-
10 change service or telephone toll service;

11 “(2) to render, bill, and collect for any other
12 telecommunications service that the customer has re-
13 quested;

14 “(3) to protect the rights or property of the
15 carrier; or

16 “(4) to protect users of any of those services
17 and other carriers from fraudulent, abusive, or un-
18 lawful use of or subscription to such service.

19 “(c) EXEMPTION PERMITTED.—The Commission
20 may, by rule, exempt from the requirements of subsection
21 (a) local exchange carriers that do not have 1,000,000 ag-
22 gregate nationwide lines installed if the Commission deter-
23 mines that such exemption is in the public interest or if
24 compliance with the requirements would impose an undue
25 economic burden on the carrier.

1 “(d) DUTY TO PROVIDE SUBSCRIBER LIST INFOR-
2 MATION.—Notwithstanding subsections (a), (b), and (c),
3 a local exchange carrier that provides subscriber list infor-
4 mation to any affiliated or unaffiliated service provider or
5 person shall provide subscriber list information on a timely
6 and unbundled basis, under nondiscriminatory and reason-
7 able rates, terms, and conditions, to any person upon rea-
8 sonable request.

9 “(e) DEFINITIONS.—As used in this section:

10 “(1) The term ‘customer proprietary network
11 information’ means—

12 “(A) information which (i) relates to the
13 quantity, technical configuration, type, destina-
14 tion, and amount of use of telephone exchange
15 service or interexchange telephone service sub-
16 scribed to by any customer of a telephone oper-
17 ating company, and (ii) is available to the tele-
18 phone operating company by virtue of the tele-
19 phone company-customer relationship;

20 “(B) information contained in the bills for
21 telephone exchange service or interexchange
22 telephone service received by a customer of a
23 telephone operating company; and

24 “(C) such other information concerning the
25 customer as is (i) available to the telephone op-

1 erating company by virtue of the customer's use
2 of the company's services, and (ii) specified as
3 within the definition of such term by such rules
4 as the Commission shall prescribe consistent
5 with the public interest,

6 except that such term does not include subscriber
7 list information.

8 "(2) The term 'subscriber information' means
9 any information—

10 "(A) identifying the names of subscribers
11 of a local exchange carrier and such subscrib-
12 ers' telephone numbers, addresses, or advertis-
13 ing classifications, or any combination of such
14 names, numbers, addresses, or classifications;
15 and

16 "(B) that the carrier or an affiliate has
17 published or accepted for future publication.

18 "(3) The term 'aggregate information' means
19 collective data that relates to a group or category of
20 services or customers, from which individual cus-
21 tomer identities or characteristics have been re-
22 moved.'".

1 **TITLE II—PRIVACY OF CALLING**
2 **PARTY INFORMATION**

3 **SEC. 201. FINDINGS.**

4 The Congress finds that:

5 (1) The right of privacy is the central principle
6 that should guide the introduction and use of new
7 telecommunications technologies and services.

8 (2) Caller Identification Service, known as
9 “Caller ID”, can provide value to telephone sub-
10 scribers by identifying the calling party prior to ac-
11 cepting the call.

12 (3) Interexchange carriers offering “800” and
13 “900” number services often pass a protocol service
14 known as the Automatic Number Identification
15 (“ANI”) that identifies the calling party’s telephone
16 number to end users.

17 (4) While Caller ID provides value to the called
18 party, it also affects the legitimate privacy interests
19 of the calling party.

20 (5) These privacy interests must be properly
21 balanced to protect the rights of both calling and re-
22 ceiving party when caller identification services are
23 offered by common carrier.

24 (6) This personal information can be developed
25 into highly sophisticated and possibly intrusive lists

1 that are subsequently used or sold for marketing
2 and other purposes often without the knowledge or
3 consent of consumers whose information was
4 accessed initially through Caller ID or ANI gen-
5 erated information.

6 (7) Unrestricted offerings of caller identifica-
7 tion services may infringe upon some calling parties'
8 expectations of anonymity and privacy in some or all
9 of their telephone transactions.

10 (8) Federal requirements for the offering of
11 caller identification service are necessary to ensure
12 uniform regulation which appropriately balances the
13 rights of both the calling and receiving party when
14 caller identification services are offered by common
15 carriers.

16 **SEC. 202. CUSTOMER PRIVACY REQUIREMENTS.**

17 (a) AMENDMENT.—Title II of the Communications
18 Act of 1934 is further amended by adding at the end
19 thereof the following new section:

20 **“SEC. 230. CUSTOMER PRIVACY REQUIREMENTS.**

21 “(a) DEFINITIONS.—As used in this section:

22 “(1) The term ‘caller identification service’
23 means a service which makes use of a display device
24 at the called party’s telephone to automatically indi-
25 cate the telephone number (with or without the area

1 code) of, or other personally identifying information
2 concerning, any party calling from within the local
3 area or from another area, except that such term
4 does not include an automatic number identification
5 service.

6 “(2) The term ‘automatic number identifica-
7 tion’ means an access signaling protocol in common
8 use by common carriers that uses an identifying sig-
9 nal associated with the use of a subscriber’s tele-
10 phone to provide billing information or other infor-
11 mation to the local exchange carrier and to any
12 other interconnecting carriers.

13 “(3) The term ‘aggregate information’ means
14 collective data that relates to a group or category of
15 services or customers, from which individual cus-
16 tomer identities or characteristics have been re-
17 moved.

18 “(b) CALLING PARTY IDENTIFICATION.—

19 “(1) RULEMAKING REQUIRED.—The Commis-
20 sion shall, within 180 days after the date of enact-
21 ment of this section, prescribe regulations requiring
22 any caller identification service offered by a common
23 carrier, or by any other person that makes use of
24 the facilities of a common carrier, to allow the caller
25 to withhold, on a per-call basis, the display of the

1 caller's telephone number, name, or other personally
2 identifying information, from the telephone or other
3 instrument of the individual receiving the call.

4 “(2) CHARGES FOR WITHHOLDING NUMBERS
5 PROHIBITED.—Such regulations shall prohibit any
6 charges from being imposed on the caller who re-
7 quests that his or her telephone number be withheld
8 from the recipient of a call placed by the caller.

9 “(3) NOTIFICATION TO CUSTOMERS.—Such reg-
10 ulations shall require every common carrier to notify
11 its subscribers that their calls may be identified to
12 a called party not later than—

13 “(A) 30 days before the common carrier
14 commences to participate in the offering of a
15 call identification service; and

16 “(B) 60 days after the date such regula-
17 tions are prescribed, if the private or common
18 carrier is participating in the offering of a call
19 identification service prior to such date.

20 “(4) EXEMPTIONS.—This subsection does not
21 apply to any of the following:

22 “(A) A caller identification service which is
23 used solely in connection with calls within the
24 same limited system, including (but not limited

1 to) a Centrex, virtual private network, or pri-
2 vate branch exchange system.

3 “(B) A caller identification service which is
4 used on a public agency’s emergency telephone
5 line or on the line which receives the primary
6 emergency telephone number (911) or on any
7 entity’s emergency assistance poison control
8 telephone line.

9 “(C) A caller identification service provided
10 in connection with legally authorized call trac-
11 ing or trapping procedures specifically re-
12 quested by a law enforcement agency.

13 “(5) WAIVER.—The regulations prescribed by
14 the Commission under paragraph (1) may waive the
15 requirements of this subsection where compliance
16 with such requirements is not technologically fea-
17 sible.

18 “(c) AUTOMATIC NUMBER IDENTIFICATION SERV-
19 ICES.—

20 “(1) CONTRACT REQUIREMENTS.—Any common
21 carrier or affiliate of a common carrier providing
22 automatic number identification services to any per-
23 son shall provide such services under a contract or
24 tariff containing telephone subscriber information

1 requirements that comply with this subsection. Such
2 requirements shall—

3 “(A) permit such person to use the tele-
4 phone number and billing information provided
5 pursuant to the automatic number identifica-
6 tion service for billing and collection, routing,
7 screening, and completion of the originating
8 telephone subscriber’s call or transaction, or for
9 services directly related to the originating tele-
10 phone subscriber’s call or transaction;

11 “(B) prohibit such person from reusing or
12 selling the telephone number or billing informa-
13 tion provided pursuant to the automatic num-
14 ber identification service without first orally (i)
15 notifying the originating telephone subscriber
16 and (ii) extending to such subscriber the option
17 to limit or prohibit such reuse or sale; and

18 “(C) prohibit such person from disclosing,
19 except as permitted by subparagraphs (A) and
20 (B), any information derived from the auto-
21 matic number identification service for any pur-
22 pose other than—

23 “(i) performing the services or trans-
24 actions that are the subject of the originat-
25 ing telephone subscriber’s call,

1 “(ii) ensuring network performance,
2 security, and the effectiveness of call deliv-
3 ery,

4 “(iii) compiling, using, and disclosing
5 aggregate information, and

6 “(iv) complying with applicable law or
7 legal process.

8 “(2) EXCEPTION FOR ESTABLISHED CUS-
9 TOMERS.—The customer information requirements
10 imposed under paragraph (1) shall not prevent a
11 person to which automatic number identification
12 services are provided from using—

13 “(A) the telephone number and billing in-
14 formation provided pursuant to such service,
15 and

16 “(B) any information derived from the
17 automatic number identification service, or
18 from the analysis of the characteristics of a
19 telecommunications transmission,

20 to offer, to any telephone subscriber with which such
21 person has an established customer relationship, a
22 product or service that is directly related to the
23 products or service previously acquired by that cus-
24 tomer from such person.

1 “(3) ENFORCEMENT.—(A) Each common car-
2 rier shall receive and transmit to the Commission
3 complaints concerning violations of the telephone
4 subscriber information requirements imposed under
5 paragraph (1). Each common carrier shall submit to
6 the Commission, in such form as the Commission
7 may require by regulation, reports on actions taken
8 by the carrier to comply with this section.

9 “(B) The Commission may, by rule or order, di-
10 rect the termination of automatic number identifica-
11 tion services to any person who has violated the tele-
12 phone subscriber information requirements imposed
13 under paragraph (1). For purposes of section
14 503(b)(1)(B), violations of such requirements shall
15 be considered to be a violation of a provision of this
16 Act.

17 “(4) EFFECTIVE DATE.—(A) Except as pro-
18 vided in subparagraph (B), the requirements of this
19 subsection shall apply to any automatic number
20 identification service provided on or after one year
21 after the date of enactment of this subsection.

22 “(B) In the case of any automatic number iden-
23 tification service provided under a contract entered
24 into, or tariff taking effect, more than 90 days after
25 the date of enactment of this subsection, the require-

1 ments of this subsection shall apply to any auto-
2 matic number identification service provided pursu-
3 ant to such contract or tariff.

4 “(d) STATE LAW.—Notwithstanding any other provi-
5 sion of this Act, no State shall prohibit or effectively pre-
6 vent the provision of caller identification services.”.

7 **SEC. 203. CONFORMING AMENDMENT.**

8 Section 2(b) of the Communications Act of 1934 is
9 amended by striking “Except as provided” and all that
10 follows through “and subject to the provisions” and insert-
11 ing “Except as provided in sections 223 through 230, in-
12 clusive, and subject to the provisions”.

13 **SEC. 204. BLOCKING.**

14 Nothing in this Act shall be construed to prevent a
15 common carrier, or any other person that makes use of
16 the facilities of a common carrier, from offering services
17 or technology enabling a telephone subscriber receiving a
18 call to block the call, or block the completion of the call,
19 where the caller has chosen to withhold the display of the
20 caller’s telephone number, name, or other personally iden-
21 tifying information.

1 **TITLE III—ACCESS TO**
2 **TELEPHONE RECORDS**

3 **SEC. 301. CLARIFICATION OF APPLICABILITY OF SECTION**
4 **705 TO CARRIERS AND THEIR EMPLOYEES;**
5 **SUBSCRIBER NOTIFICATION.**

6 Section 705(a) of the Communications Act of 1934
7 (47 U.S.C. 605(a)) is amended by adding at the end the
8 following new sentences: “The prohibitions contained in
9 this section apply to a person who is a common carrier
10 or an affiliate or employee of a common carrier and who
11 divulges or publishes the existence, contents, substance,
12 purport, effect, or meaning thereof to a person who is not
13 a common carrier or affiliate or employee of a common
14 carrier. Any common carrier that, pursuant to a subpoena
15 issued by a court of competent jurisdiction or on demand
16 of other lawful authority, divulges or publishes a subscri-
17 er’s billing information or other information disclosing the
18 existence of any interstate or foreign communication by
19 wire or radio by a subscriber, shall inform such subscriber
20 within 10 days after such information is divulged or pub-
21 lished of the information divulged or published and the
22 identity of the recipient of the information, unless such
23 carrier is prohibited from so informing such subscriber by
24 order of such court or other lawful authority for the pur-

1 pose of preventing the subject of a criminal investigation
2 from being informed of its pendency.”.

3 **TITLE IV—PRIVACY OF**
4 **SUBSCRIBER INFORMATION—**

5 **SEC. 401. IMPACT OF CONVERGING COMMUNICATIONS**
6 **TECHNOLOGIES ON CONSUMER PRIVACY.**

7 (a) PROCEEDING REQUIRED.—Within 6 months after
8 the date of enactment of this Act, the Commission shall
9 commence a proceeding—

10 (1) to examine the impact of the integration
11 into interconnected communications networks of
12 wireless telephone, cable, satellite, and other tech-
13 nologies on the privacy rights and remedies of the
14 consumers of those technologies;

15 (2) to examine the impact that the globalization
16 of such integrated communications networks has on
17 the international dissemination of consumer infor-
18 mation and the privacy rights and remedies to pro-
19 tect consumers;

20 (3) to propose changes in the Commission’s reg-
21 ulations to ensure that the effect on consumer pri-
22 vacy rights is considered in the introduction of new
23 telecommunications services and that the protection
24 of such privacy rights is incorporated as necessary

1 in the design of such services or the rules regulating
2 such services;

3 (4) to propose changes in the Commission's reg-
4 ulations as necessary to correct any defects identi-
5 fied pursuant to paragraph (1) in such rights and
6 remedies; and

7 (5) to prepare recommendations to the Con-
8 gress for any legislative changes required to correct
9 such defects.

10 (b) SUBJECTS FOR EXAMINATION.—In conducting
11 the examination required by subsection (a)(1), the Com-
12 mission shall determine whether consumers are able, and,
13 if not, the methods by which consumers may be enabled—

14 (1) to have knowledge that consumer informa-
15 tion is being collected about them through their uti-
16 lization of various communications technology;

17 (2) to have notice that such information could
18 be used, or is intended to be used, by the entity col-
19 lecting the data for reasons unrelated to the original
20 communications, or that such information could be
21 sold (or is intended to be sold) to other companies
22 or entities; and

23 (3) to stop the reuse or resale of that informa-
24 tion.

1 (c) SCHEDULE FOR COMMISSION RESPONSES.—The
2 Commission shall, within one year after the date of enact-
3 ment of this Act—

4 (1) complete any rulemaking required to revise
5 Commission regulations to correct defects in such
6 regulations identified pursuant to subsection (a)(1);
7 and

8 (2) submit to the Congress a report containing
9 the recommendations required by subsection (a)(3).

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