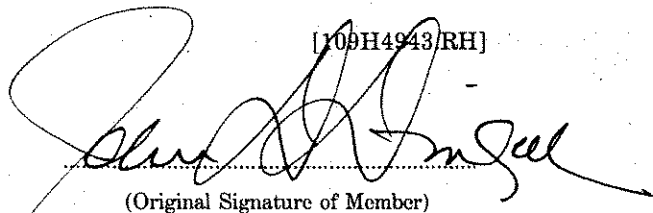


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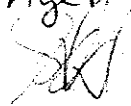
110TH CONGRESS
1ST SESSION

H. R.

To prohibit fraudulent access to telephone records.

IN THE HOUSE OF REPRESENTATIVES

Mr. DINGELL (for himself, Mr. BARTON of Texas, Mr. MARKEY, Mr. UPTON, Mr. RUSH, Mr. STEARNS, Ms. SCHAKÓWSKY, Mr. BOUCHER, Mr. GORDON of Tennessee, Ms. ESHOO, Mr. STUPAK, Mr. GENE GREEN of Texas, Ms. DEGETTE, Mrs. CAPPS, Mr. DOYLE, Ms. SOLIS, Mr. GONZALEZ, Mr. INSLEE, Ms. BALDWIN, Ms. HOOLEY, Mr. MATHESON, Mr. BUTTERFIELD, Mr. FOSSELLA, Mr. TERRY, and Mr. BURGESS) introduced the following bill; which was referred to the Committee on

and Mr. Engel


A BILL

To prohibit fraudulent access to telephone records.

- 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 "Prevention of Fraudu-
- 5 lent Access to Phone Records Act".

1 **TITLE I—FEDERAL TRADE**
 2 **COMMISSION PROVISIONS**

3 **SEC. 101. FRAUDULENT ACCESS TO CUSTOMER TELE-**
 4 **PHONE RECORDS.**

5 (a) PROHIBITION ON OBTAINING CUSTOMER INFOR-
 6 MATION BY FALSE PRETENSES.—It shall be unlawful for
 7 any person to obtain or attempt to obtain, or cause to
 8 be disclosed or attempt to cause to be disclosed to any
 9 person, customer proprietary network information relating
 10 to any other person by—

11 (1) making a false, fictitious, or fraudulent
 12 statement or representation to an officer, employee,
 13 or agent of a telecommunications carrier; or

14 (2) providing any document or other informa-
 15 tion to an officer, employee, or agent of a tele-
 16 communications carrier that the person knows or
 17 should know to be forged, counterfeit, lost, stolen, or
 18 fraudulently obtained, or to contain a false, ficti-
 19 tious, or fraudulent statement or representation.

20 (b) PROHIBITION ON SOLICITATION OF A PERSON TO
 21 OBTAIN CUSTOMER INFORMATION UNDER FALSE PRE-
 22 TENSES.—It shall be unlawful to request a person to ob-
 23 tain from a telecommunications carrier customer propri-
 24 etary network information relating to any third person,
 25 if the person making such a request knew or should have

1 known that the person to whom such a request is made
2 will obtain or attempt to obtain such information in the
3 manner described in subsection (a).

4 (c) PROHIBITION ON SALE OR OTHER DISCLOSURE
5 OF CUSTOMER INFORMATION OBTAINED UNDER FALSE
6 PRETENSES.—It shall be unlawful for any person to sell
7 or otherwise disclose to any person customer proprietary
8 network information relating to any other person if the
9 person selling or disclosing obtained such information in
10 the manner described in subsection (a).

11 **SEC. 102. EXEMPTION.**

12 No provision of section 101 shall be construed so as
13 to prevent any action by a law enforcement agency, or any
14 officer, employee, or agent of such agency, from obtaining
15 or attempting to obtain customer proprietary network in-
16 formation from a telecommunications carrier in connection
17 with the performance of the official duties of the agency,
18 in accordance with other applicable laws.

19 **SEC. 103. ENFORCEMENT BY THE FEDERAL TRADE COM-**
20 **MISSION.**

21 A violation of section 101 shall be treated as a viola-
22 tion of a rule defining an unfair or deceptive act or prac-
23 tice prescribed under section 18(a)(1)(B) of the Federal
24 Trade Commission Act (15 U.S.C. 57a(a)(1)(B)). The
25 Federal Trade Commission shall enforce this title in the

1 same manner, by the same means, and with the same ju-
2 risdiction as though all applicable terms and provisions of
3 the Federal Trade Commission Act were incorporated into
4 and made a part of this title.

5 **SEC. 104. DEFINITIONS.**

6 As used in this title—

7 (1) the term “customer proprietary network in-
8 formation” has the meaning given such term in sec-
9 tion 222(j)(1) of the Communications Act of 1934
10 (47 U.S.C. 222(j)(1)) (as redesignated by section
11 203 of this Act);

12 (2) the term “telecommunications carrier”—

13 (A) has the meaning given such term in
14 section 3(44) of the Communications Act of
15 1934 (47 U.S.C. 153(44)); and

16 (B) includes any provider of real-time
17 Internet protocol-enabled voice communications;
18 and

19 (3) the term “real-time Internet protocol-en-
20 abled voice communications” means any service that
21 is treated by the Federal Communications Commis-
22 sion as a telecommunications service provided by a
23 telecommunications carrier for purposes of section
24 222 of the Communications Act of 1934 (47 U.S.C.

1 222) under regulations promulgated pursuant to
2 subsection (h) of such section.

3 **TITLE II—FEDERAL COMMU-**
4 **NICATIONS COMMISSION**
5 **PROVISIONS**

6 **SEC. 201. FINDINGS.**

7 The Congress finds the following:

8 (1) As our Nation's communications networks
9 become more ubiquitous and increasingly sophisti-
10 cated, more individuals and industries will be using
11 such networks in greater amounts to communicate
12 and conduct commercial transactions.

13 (2) The ease of gathering and compiling sen-
14 sitive personal information as a result of such com-
15 munications is becoming more efficient and common-
16 place due to advances in digital technology and the
17 widespread use of the Internet.

18 (3) Ensuring the privacy of sensitive individual
19 telephone calling records, both wireline and wireless,
20 is of utmost importance. The information gathered
21 and retained by communications providers can con-
22 vey details about intimate aspects of an individual's
23 life, including who they call, when they call, the du-
24 ration of such calls, the frequency of their commu-
25 nications, information about their purchases, infor-

1 mational inquiries, political or religious interests, or
2 other affiliations.

3 (4) Disclosure of personal telephone records can
4 also lead to harassment, intimidation, physical harm,
5 and identity theft.

6 (5) The government has a compelling interest
7 in protecting sensitive personal information con-
8 tained in customer telephone records and ensuring
9 that commercial interests adequately protect such
10 records in order to preserve individual freedom, safe-
11 guard personal privacy, and ensure trust in elec-
12 tronic commerce.

13 (6) Because customers have a proprietary inter-
14 est in their sensitive personal information, customers
15 should have some control over the use and disclosure
16 of telephone calling records.

17 (7) A telecommunications carrier may use ag-
18 gregated data it has obtained from its customer
19 databases to improve services, solicit new business,
20 or market additional services to its customers.

21 (8) A telecommunications carrier may commu-
22 nicate to all consumers in order to broadly solicit
23 new business, and may also target specific commu-
24 nications to its own existing customers, without use
25 or disclosure of detailed customer calling records

1 and thus without the threat of compromising cus-
2 tomer privacy.

3 (9) The risk of compromising customer privacy
4 is raised and increased whenever additional entities
5 or persons are permitted use of, or access to, or re-
6 ceive disclosure of, customer calling records beyond
7 the carrier with which the customer has an estab-
8 lished business relationship.

9 (10) A telecommunications carrier which ob-
10 tains or possesses a customer's calling records has a
11 duty to safeguard the confidentiality of such cus-
12 tomer's personal information. Detailed customer
13 calling records describing the customer's use of tele-
14 communications services should not be publicly avail-
15 able or offered for commercial sale.

16 **SEC. 202. EXPANDED PROTECTION FOR DETAILED CUS-**
17 **TOMER RECORDS.**

18 (a) **CONFIDENTIALITY OF CUSTOMER INFORMA-**
19 **TION.**—Paragraph (1) of section 222(c) of the Commu-
20 nications Act of 1934 (47 U.S.C. 222(c)(1)) is amended
21 to read as follows:

22 “(1) **PRIVACY REQUIREMENTS FOR TELE-**
23 **COMMUNICATIONS CARRIERS.**—

24 “(A) **IN GENERAL.**—Except as required by
25 law or as permitted under the following provi-

1 sions of this paragraph, a telecommunications
2 carrier that receives or obtains individually
3 identifiable customer proprietary network infor-
4 mation (including detailed customer telephone
5 records) by virtue of its provision of a tele-
6 communications service shall only use, disclose,
7 or permit access to such information or records
8 in the provision by such carrier of—

9 “(i) the telecommunications service
10 from which such information is derived; or

11 “(ii) services necessary to, or used in,
12 the provision of such telecommunications
13 service, including the publishing of direc-
14 tories.

15 “(B) REQUIREMENTS FOR DISCLOSURE OF
16 DETAILED INFORMATION.—A telecommuni-
17 cations carrier may only use detailed customer
18 telephone records through, or disclose such
19 records to, or permit access to such records by,
20 a joint venture partner, independent contractor,
21 or any other third party (other than an affil-
22 iate) if the customer has given express prior au-
23 thorization for that use, disclosure, or access,
24 and that authorization has not been withdrawn.

1 “(C) REQUIREMENTS FOR AFFILIATE USE
2 OF BOTH GENERAL AND DETAILED INFORMA-
3 TION.—A telecommunications carrier may not,
4 except with the approval of a customer, use in-
5 dividually identifiable customer proprietary net-
6 work information (including detailed customer
7 telephone records) through, or disclose such in-
8 formation or records to, or permit access to
9 such information or records by, an affiliate of
10 such carrier in the provision by such affiliate of
11 the services described in clause (i) or (ii) of
12 subparagraph (A).

13 “(D) REQUIREMENTS FOR PARTNER AND
14 CONTRACTOR USE OF GENERAL INFORMA-
15 TION.—A telecommunications carrier may not,
16 except with the approval of the customer, use
17 individually identifiable customer proprietary
18 network information (other than detailed cus-
19 tomer telephone records) through, or disclose
20 such information to, or permit access to such
21 information by, a joint venture partner or inde-
22 pendent contractor in the provision by such
23 partner or contractor of the services described
24 in clause (i) or (ii) of subparagraph (A).

1 “(E) ACCESS TO WIRELESS TELEPHONE
2 NUMBERS.—A telecommunications carrier may
3 not, except with prior express authorization
4 from the customer, disclose the wireless tele-
5 phone number of any customer or permit access
6 to the wireless telephone number of any cus-
7 tomer.”.

8 (b) DISCLOSURE OF DETAILED INFORMATION ON
9 REQUEST BY CUSTOMER.—Section 222(c)(2) of such Act
10 is amended by inserting “(including a detailed customer
11 telephone record)” after “customer proprietary network
12 information”.

13 (c) AGGREGATE DATA.—Section 222(c)(3) of such
14 Act is amended by adding at the end the following new
15 sentence: “Aggregation of data that is conducted by a
16 third party may be treated for purposes of this subsection
17 as aggregation by the carrier if such aggregation is con-
18 ducted in a secure manner under the control or super-
19 vision of the carrier.”.

20 (d) PROHIBITION OF SALE OF GENERAL OR DE-
21 TAILED INFORMATION.—Section 222(e) of such Act is fur-
22 ther amended by adding at the end the following new para-
23 graph:

24 “(4) PROHIBITION OF SALE OF GENERAL OR
25 DETAILED INFORMATION.—Except for the purposes

1 for which use, disclosure, or access is permitted
2 under subsection (d), it shall be unlawful for any
3 person to sell, rent, lease, or otherwise make avail-
4 able for remuneration or other consideration the cus-
5 tomer proprietary network information (including
6 the detailed customer telephone records) of any cus-
7 tomer.”.

8 (e) EXCEPTIONS TO LIMITATIONS ON DISCLOSURES
9 OF DETAILED INFORMATION.—Section 222(d) of such Act
10 is amended—

11 (1) by striking “its agents” and inserting “its
12 joint venture partners, contractors, or agents”; and

13 (2) in paragraph (1), by inserting after “tele-
14 communications services” the following: “, or pro-
15 vide customer service with respect to telecommuni-
16 cations services to which the customer subscribes”.

17 **SEC. 203. PREVENTION BY TELECOMMUNICATIONS CAR-**
18 **RIERS OF FRAUDULENT ACCESS TO PHONE**
19 **RECORDS.**

20 Section 222 of the Communications Act of 1934 (47
21 U.S.C. 222) is further amended—

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

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

1 “(h) PREVENTION OF FRAUDULENT ACCESS TO
2 PHONE RECORDS.—

3 “(1) REGULATIONS.—Within 180 days after the
4 date of enactment of the Prevention of Fraudulent
5 Access to Phone Records Act, the Commission shall
6 prescribe regulations adopting more stringent secu-
7 rity standards for customer proprietary network in-
8 formation (including detailed customer telephone
9 records) to detect and prevent violations of this sec-
10 tion. The Commission—

11 “(A) shall prescribe regulations—

12 “(i) to require timely notice (written
13 or electronic) to each customer upon
14 breach of the regulations under this section
15 with respect to customer proprietary net-
16 work information relating to that cus-
17 tomer;

18 “(ii) to require timely notice to the
19 Commission upon breach of the regulations
20 under this section with respect to customer
21 proprietary network information relating to
22 any customer;

23 “(iii) to require periodic audits by the
24 Commission of telecommunication carriers

1 and their agents to determine compliance
2 with this section;

3 “(iv) to require telecommunications
4 carriers and their agents to maintain
5 records—

6 “(I) of each time customer pro-
7 prietary network information is re-
8 quested or accessed by, or disclosed
9 to, a person purporting to be the cus-
10 tomer or to be acting at the request
11 or direction of the customer; and

12 “(II) if such access or disclosure
13 was granted to such a person, of how
14 the person’s identity or authority was
15 verified;

16 “(v) to require telecommunications
17 carriers to establish a security policy that
18 includes appropriate standards relating to
19 administrative, technical, and physical
20 safeguards to ensure the security and con-
21 fidentiality of customer proprietary net-
22 work information;

23 “(vi) to prohibit any telecommuni-
24 cations carrier from obtaining or attempt-
25 ing to obtain, or causing to be disclosed or

1 attempting to cause to be disclosed to that
2 carrier or its agent or employee, customer
3 proprietary network information relating to
4 any customer of another carrier—

5 “(I) by using a false, fictitious,
6 or fraudulent statement or representa-
7 tion to an officer, employee, or agent
8 of another telecommunications carrier;
9 or

10 “(II) by making a false, ficti-
11 tious, or fraudulent statement or rep-
12 resentation to a customer of another
13 telecommunications carrier; and

14 “(vii). only for the purposes of this
15 section, to treat as a telecommunications
16 service provided by a telecommunications
17 carrier any real-time Internet protocol-en-
18 abled voice communications offered by any
19 person to the public, or such classes of
20 users as to be effectively available to the
21 public, that allows a user to originate traf-
22 fic to, or terminate traffic from, the public
23 switched telephone network; and

24 “(B) shall consider prescribing regula-
25 tions—

1 “(i) to require telecommunications
2 carriers to institute customer-specific iden-
3 tifiers in order to access customer propri-
4 etary network information;

5 “(ii) to require encryption of customer
6 proprietary network information data or
7 other safeguards to better secure such
8 data; and

9 “(iii) to require deletion of customer
10 proprietary network information data after
11 a reasonable period of time if such data is
12 no longer necessary for the purpose for
13 which it was collected or for the purpose of
14 an exception contained in section (d), and
15 there are no pending requests for access to
16 such information.

17 “(2) REPORTS.—

18 “(A) ASSESSMENT AND RECOMMENDA-
19 TIONS.—Within 12 months after the date on
20 which the Commission’s regulations under para-
21 graph (1) are prescribed, and again not later
22 than 3 years later, the Commission shall submit
23 to the Committee on Energy and Commerce of
24 the House of Representatives and the Com-

1 mittee on Commerce, Science, and Transpor-
2 tation of the Senate a report containing—

3 “(i) an assessment of the efficacy and
4 adequacy of the regulations and remedies
5 provided in accordance with this subsection
6 in protecting customer proprietary network
7 information;

8 “(ii) an assessment of the efficacy and
9 adequacy of telecommunications carriers’
10 safeguards to secure such data, security
11 plans, and notification procedures; and

12 “(iii) any recommendations for addi-
13 tional legislative or regulatory action to ad-
14 dress threats to the privacy of customer in-
15 formation.

16 “(B) ANNUAL REPORT.—The Federal
17 Communications Commission shall submit to
18 Congress an annual report containing—

19 “(i) the number and disposition of all
20 enforcement actions taken pursuant to this
21 subsection; and

22 “(ii) the number and type of notifica-
23 tions received under paragraph (1)(A)(ii)
24 and the methodology, including the basis
25 for the selection of carriers to be audited,

1 and the results of each audit conducted
2 under paragraph (1)(A)(iii).

3 “(3) DUAL REGULATION PROHIBITED.—Any
4 person that is treated as a telecommunications car-
5 rier providing a telecommunications service with re-
6 spect to the offering of real-time Internet protocol-
7 enabled voice communications by the regulations
8 prescribed under paragraph (1)(A)(vii) shall not be
9 subject to the provisions of section 631 with respect
10 to the offering of such communications.

11 “(i) FORFEITURE PENALTIES.—

12 “(1) INCREASED PENALTIES.—In any case in
13 which the violator is determined by the Commission
14 under section 503(b)(1) to have violated this section
15 or the regulations thereunder, section 503(b)(2)(B)
16 shall be applied—

17 “(A) by substituting ‘\$300,000’ for
18 ‘\$100,000’; and

19 “(B) by substituting ‘\$3,000,000’ for
20 ‘\$1,000,000’.

21 “(2) NO FIRST WARNINGS.—Paragraph (5) of
22 section 503(b) shall not apply to the determination
23 of forfeiture liability under such section with respect
24 to a violation of this section or the regulations there-

1 under by any telecommunications carrier or any
2 agent of such a carrier.”; and

3 (3) in subsection (g), by striking “subsection
4 (i)(3)(A)” and inserting “subsection (j)(3)(A)”.

5 **SEC. 204. DEFINITIONS.**

6 Subsection (j) of section 222 of the Communications
7 Act of 1934 (47 U.S.C. 222(j)), as redesignated by section
8 203(1) of this Act, is amended by adding at the end the
9 following new paragraphs:

10 “(8) DETAILED CUSTOMER TELEPHONE
11 RECORD.—The term ‘detailed customer telephone
12 record’ means customer proprietary network infor-
13 mation that contains the specific and detailed des-
14 tinations, locations, duration, time, and date of tele-
15 communications to or from a customer, as typically
16 contained in the bills for such service. Such term
17 does not mean aggregate data or subscriber list in-
18 formation.

19 “(9) WIRELESS TELEPHONE NUMBER.—The
20 term ‘wireless telephone number’ means the tele-
21 phone number of a subscriber to a commercial mo-
22 bile service.”.