

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of: )

Protecting the Privacy of Customers of )  
Broadband and Other Telecommunications )  
Services )

WC Docket No. 16-106

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**COMMENTS OF THE VOICE ON THE NET COALITION**

The Voice on the Net Coalition (“VON”)<sup>1</sup> hereby submits these comments filed in response to the Federal Communications Commission’s (“Commission”) April 1, 2016, Notice of Proposed Rulemaking (“NPRM”), which seeks comments on imposing privacy requirements on certain broadband providers. Specifically, VON’s comments address the NPRM’s discussion of potentially harmonizing any broadband privacy requirements adopted in this proceeding with the privacy requirements already imposed on interconnected VoIP providers. Broadband and interconnected VoIP are different services requiring different regulatory treatment. Accordingly, VON does not support the expansion to VoIP of additional privacy requirements that may be adopted in this docket. VON is also concerned about the significant expansion of the CPNI rules generally, and that unpredictable enforcement of the rules will chill the continuing growth and development of the VoIP market.

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<sup>1</sup> The VON Coalition works to advance regulatory policies that enable Americans to take advantage of the promise and potential of IP enabled communications. VON Coalition members are developing and delivering voice and other communications applications that may be used over the Internet. For more information, see [www.von.org](http://www.von.org).

## I. BACKGROUND

The NPRM proposes the establishment of privacy rules for broadband internet access service (“BIAS”) providers. The NPRM builds on the *2015 Open Internet Order*,<sup>2</sup> which, *inter alia*, classified BIAS as a telecommunications service under Title II of the Communications Act of 1934 (“Act”) and promulgated rules that banned blocking, throttling, and paid prioritization of BIAS provider customers.<sup>3</sup> The rules applied to “mass market” BIAS, and therefore did not extend to enterprise customers of BIAS providers.<sup>4</sup>

The NPRM proposes rules that would apply Section 222 of the Act to BIAS providers. According to the NPRM, the proposed rules are necessary because broadband providers are “in a position to develop highly detailed and comprehensive profiles of their customers – and to do so in a manner that may be completely invisible.”<sup>5</sup> The NPRM explains that “[e]ven when traffic is encrypted, the provider has access to, for example, what websites a customer has visited, how long and during what hours of the day the customer visited various websites, the customer’s location, and what mobile device the customer used to access those websites.”<sup>6</sup>

While some of the proposed rules would mirror existing CPNI requirements, others would be more stringent, and the Commission seeks comment on harmonizing privacy rules for providers of interconnected VoIP and other voice services (e.g., wireless and wireline services), and BIAS providers. The Commission’s proposal reflects the expansive authority that it has

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<sup>2</sup> *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (2015) (“2015 Open Internet Order”).

<sup>3</sup> See 2015 Open Internet Order ¶¶ 4, 37.

<sup>4</sup> *Id.* ¶ 189.

<sup>5</sup> NPRM ¶ 4.

<sup>6</sup> *Id.* ¶ 4.

exercised over the newly created category of “customer proprietary information” in recent enforcement actions against telecommunications service providers.<sup>7</sup>

## **II. THE COMMISSION SHOULD NOT EXPAND THE PRIVACY REQUIREMENTS OF INTERCONNECTED VOIP PROVIDERS**

### **A. The Privacy Concerns Of Broadband And Interconnected VoIP Customers Are Not The Same**

Simply put, the types of information that VoIP providers and BIAS providers collect are different, and may warrant different privacy and data security requirements. Most significantly, VoIP providers collect call detail records, but cannot access the Internet browsing history of their customers, including websites visited and the content transmitted between customers and websites.<sup>8</sup> Accordingly, many of the proposed privacy requirements are inapplicable to interconnected VoIP providers.

For example, the NPRM’s proposal to require providers to use multifactor authentication on customer online accounts is designed to protect customer personally identifiable information (“PII”),<sup>9</sup> a proposed new term that would be included with an expanded definition of CPNI under the umbrella of “customer proprietary information.”<sup>10</sup> However, interconnected VoIP providers collect a limited set of PII. As a result, instead of protecting PII, extension of the multifactor authentication proposal to interconnected VoIP providers would simply make life unnecessarily difficult for VoIP customers, who would more frequently get locked out of their accounts when trying to pay their phone bills.

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<sup>7</sup> See *TerraCom, Inc. and YourTel America, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 13325 (2014).

<sup>8</sup> See *Id.* ¶ 4.

<sup>13</sup> NPRM ¶ 211.

<sup>13</sup> NPRM ¶ 211.

Another example is the proposed data breach notification requirements.<sup>11</sup> The PII that interconnected VoIP providers may collect that does not fall within the definition of CPNI is relatively non-sensitive information. As a result, rather than promoting consumer protection, forcing an interconnected VoIP provider to send out a data breach notification if it experienced a security incident that compromised this type of PII would contribute to “notice fatigue” among customers and be unnecessarily burdensome for providers.<sup>12</sup>

To be sure, there is a general interest in privacy shared by customers of all industries over which the Commission has regulatory authority. However, many of these industries, including broadband and interconnected VoIP, are too distinct for a one-size-fits-all approach to privacy regulation. The Commission should therefore continue in the tradition of the *2007 CPNI Order* and tailor its privacy requirements to specific services on a case-by-case basis.

#### **B. Extension Of The Broadband Privacy Requirements To Interconnected VoIP Could Hinder Competition In The Highly Competitive VoIP Marketplace**

Interconnected VoIP is a highly competitive market, with low barriers to entry for new competitors, which has thrived in the light touch regulatory regime embraced by the Commission. Interconnected VoIP consumers enjoy the benefits of this competition with lower prices and increased service options. Many interconnected VoIP providers offer service on a month-to-month basis, with few requiring long-term contracts. Thus, customers that do not like the privacy protections or policies offered by their providers, can easily move to another provider.

Expanding the privacy obligations of interconnected VoIP providers could forestall competition in this market. The proposed new requirements would hurt smaller providers who

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<sup>13</sup> NPRM ¶ 211.

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would incur substantial administrative costs to comply and be burdened with the potential liability for the data security practices of third-party partners.<sup>13</sup> Indeed, small providers may be unable to absorb such costs, and potential new providers may be deterred from entering the market because of the liability risks and regulatory compliance costs. And because many of the proposed privacy requirements are inapplicable to interconnected VoIP providers, there is no reason to increase these obligations on interconnected VoIP providers. A better approach would be to apply privacy regulations based on the statutory requirements of Section 222 established by Congress.

The Commission's overly restrictive limitations on first-party marketing actually would be particularly harmful for smaller companies that offer interconnected VoIP service alone. Under the Commission's proposal, a company may share PII internally to market communications-related services, as long as the company obtains opt-out consent.<sup>14</sup> If the voice privacy rules are harmonized with the Commission's proposed BIAS rules, a company that offers broadband and interconnected VoIP service has a relatively easy route to using their VoIP customer's name, phone number, email address, and physical address when marketing broadband services. Companies that offer interconnected VoIP alone could not partner with a stand-alone broadband provider to profit from the same scenario so easily; to share PII with a third party, the interconnected VoIP provider would have to obtain opt-in consent.<sup>15</sup>

Similarly, applying the proposed customer consent rules would make it more difficult for smaller companies that do not perform all marketing functions in-house. For example, the Commission's proposed rules are unclear whether a voice provider who shares PII with a third party vendor to aid in its marketing of other voice products triggers the need for opt-in consent.

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<sup>13</sup> NPRM ¶ 211.

<sup>14</sup> *Id.* ¶ 71.

<sup>15</sup> *Id.* ¶ 107.

In short, the proposed rules significantly expand the scope of the Commission’s privacy regulations and impose new burdens that are particularly harmful for smaller providers.

**C. Extension Of The Broadband Privacy Requirements To Interconnected VoIP Would Be Inconsistent With The Scope Of The *2015 Open Internet Order***

BIAS providers serving enterprise customers were excluded from the scope of the *2015 Open Internet Order’s* rules. The Commission explained that “enterprise customers tend to be sophisticated and knowledgeable (often with the assistance of consultants), . . . contracts are typically the result of RFPs and are individually-negotiated (and frequently subject to non-disclosure clauses), . . . contracts are generally for customized service packages, and . . . the contracts usually remain in effect for a number of years.”<sup>16</sup> The NPRM follows the lead of the *2015 Open Internet Order* and excludes BIAS providers serving enterprise customers from the proposed privacy requirements.

In contrast, the existing CPNI rules apply to VoIP providers serving enterprise customers. Applying even more privacy obligations on providers of enterprise voice services – whose customers are equally as sophisticated and knowledgeable as enterprise BIAS customers – would be unjustified and inconsistent with the scope of the *2015 Open Internet Order*. Put another way, in attempting to harmonize the regulatory treatment of BIAS and interconnected VoIP providers’ privacy practices, the Commission would actually make the regulatory treatment *less similar* in the enterprise context.

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<sup>16</sup> 2015 Open Internet Order ¶ 189 n.466.

## CONCLUSION

For the foregoing reasons, VON does not support any expansion of the privacy requirements imposed on interconnected VoIP providers.

Respectfully submitted,

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