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FCC Adopts Rules Resolving How Phone Companies Share and Market Customer Information

Washington, D.C. – The Federal Communications Commission (“FCC”) has adopted rules setting forth the type of customer approval required before a telecommunications carrier can use, disclose or permit access to customer proprietary network information (“CPNI”). CPNI includes almost all individually identifiable information regarding a customer’s phone usage, including the services to which a customer subscribes and to whom, when and where the customer has placed calls.

The FCC’s rules implement the so-called opt-in/opt-out approach. The FCC describes this approach as a careful balance between consumers’ privacy interests and carriers’ First Amendment rights. The FCC believes that the opt-in/opt-out approach is consistent with the decision of the United States Court of Appeals for the Tenth Circuit in 1999, which vacated the FCC’s the opt-in approach for a carrier to use, disclose or permit access to CPNI.

The essential elements of the opt-out/opt-in approach are as follows:

- ***Opt-Out*** – Use of CPNI by carriers or disclosure to their affiliated entities providing communications-related services, as well as third-party agents and joint venture partners providing communications-related services, requires a customers’ knowing consent in the form of notice and opt-out approval. Carriers have the choice to use either opt-in or opt-out in this context.
- ***Opt-In*** – Disclosure of CPNI to unrelated third parties or to carrier affiliates that do not provide communications-related services requires express customer consent, or opt-in approval.

In addition to adopting the opt-out/opt-in approach, the FCC’s new rules:

- Clarify the FCC’s rules governing the form, content and frequency of carrier notices to customers of their CPNI rights.

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- Forbear from imposing the express consent requirements announced in this Order with respect to PC-freezes.
- Affirm the FCC’s previous determination that the word “information” in section 272 does not include CPNI, which is governed instead by section 222 of the Act.
- Affirm the FCC’s finding that the Tenth Circuit decision vacated only the CPNI rules related to opt in and left intact the remainder of the Commission’s rules.

The FCC also adopted a Further Notice of Proposed Rulemaking (FNPRM) seeking comment on enforcement issues and issues related to customer information of carriers that go out of business or seek bankruptcy protection.

If you would like additional information on the FCC’s new CPNI rules or CPNI issues generally or if you would like to file comments in the FNPRM, please feel free to contact us.

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