

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
APPROVING IN PART, DISSENTING IN PART**

Re: *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-115 and WC Docket No. 04-36*

Through this proceeding, we address an issue of immediate personal importance to American consumers, the protection of sensitive information that telephone companies collect about their customers. This information can include some of the most private personal information about an individual, and failure to safeguard it can result in highly invasive intrusions into both the personal and professional lives of consumers. When someone gets hold of who you are calling, and for how long, it is like letting strangers pick your brain about your friends, plans or business dealings. So, I am pleased to support much of this Order, which takes meaningful steps to shut off the information drain that has left so many customers exasperated.

Congress recognized the sensitivity of this information in the Telecommunications Act of 1996 when it prohibited phone companies from using or disclosing customer proprietary network information without the customer's approval. It charged the Commission with enforcing this privacy protection and the Commission previously adopted a set of rules designed to ensure that telephone companies have effective safeguards in place.

Today's action comes in response to the chorus of evidence detailing the need for greater privacy measures. Indeed, this proceeding flows from a petition filed by a watchful public interest group, the Electronic Privacy Information Center (EPIC), which alerted the FCC during the summer of 2005 to the troubling trend of telephone call records being made available on the Internet without customers' knowledge or consent. As EPIC then made clear to the Commission and as the record to this proceeding has borne out, disclosure of these records is far more than a mere annoyance; indeed, it can lead to tragic consequences.

So, our efforts here to strengthen our rules are critical and time sensitive. This Order takes several important steps tighten our rules and provide greater security for sensitive consumer records. Requiring more rigorous customer authentication, giving customers notice of account changes, and applying a more consumer-friendly approach to sharing of customer data should all serve to improve customers control over their private data. As documented by EPIC, the sheer volume of customer information illegally available for public consumption made clear just how porous the existing firewalls and safeguards have been. At the same time, the Commission strikes a balanced approach in this Order, giving consumers greater ability to control their own information while also giving companies a degree of flexibility in how they implement safeguards. In this regard, I would like to thank Chairman Martin and the Wireline Competition Bureau for their attention to this item. Their extra work to fine tune the rules we adopt here will surely improve their functioning for consumers and providers alike.

Although much of this Order does exactly what Congress contemplated – putting the customer in control – there is one critical aspect where this Order falls short. Despite the Order's conclusion that customers should have notice of unauthorized disclosure of customer information, this Order set up a process which can result in the unnecessary and even indefinite delay of consumer notification without any accountability. Under these rules, the Commission gives the Federal Bureau of Investigation a potentially open-ended ability to delay customer notification of security breaches. While I expect that the FBI will work as quickly as possible to identify any investigative issues, I find no statutory basis in the Act for granting the FBI a blank check to delay notice to customers. I can understand the need for delay in extraordinary circumstances identified by law enforcement, but automatic delays coupled with unlimited and unchecked extensions are not appropriate. Particularly given that timely notice to

consumers may be essential for those customers to take protective action, I must dissent from this portion of the Order.

Finally, even as we work here to improve our rules and as Congress considers additional safeguards, we must also re-double our efforts to address abuses of this private information. Swift enforcement action against companies that are violating our rules will be essential if we are to live up to our duty under the Act to protect customers' sensitive and private information.