**NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

**RESOLUTION 2016-02**

**URGING FEDERAL OFFICIALS TO ENSURE THE PRIVACY RIGHTS OF CUSTOMERS USING 21st CENTURY TELECOMMUNICATIONS SERVICES**

***Whereas****,* American common law, state and federal constitutions, legislative enactments and public opinion recognize the individual’s basic human right to privacy with respect to personal information; and

***Whereas****,* the National Association of State Utility Consumer Advocates (“NASUCA”) has an earnest and long-standing interest in issues and policies that affect the privacy rights of utility consumers, including the right to control personal identifying information such as name, address, telephone number, account number, billing history and usage information, commonly referred to as Customer Proprietary Network Information (CPNI)[[1]](#footnote-1); and

***Whereas,*** the Federal Communications Commission (FCC) has deemed Broadband Internet Access Service an essential telecommunications service;[[2]](#footnote-2) and

***Whereas,*** 47 U.S.C. § 222 includes detailed requirements for maintaining the privacy of CPNI associated with the provision of telecommunications services, but those requirements do not apply to other services offered by Broadband Internet Access Providers or to information providers at the edge of the network who do not operate the broadband networks used by customers (Edge Service Providers);[[3]](#footnote-3) and

***Whereas,*** while the Federal Communications Commission granted Broadband Internet Access Service forbearance from many provisions of Title II, it did not forbear from the requirements of 47 U.S.C. § 222 pertaining to maintaining the privacy of CPNI;[[4]](#footnote-4) and

***Whereas,*** the FCC has recognized that Broadband Internet Access Service providers that operate broadband networks are distinct from edge service providers; and

***Whereas****,* the Federal Communications Commission (FCC) and Federal Trade Commission (FTC) have recognized that Broadband Internet Access Service providers are in a position to develop highly detailed and comprehensive profiles of their customers and can do so in a manner that may be completely invisible to the customer;[[5]](#footnote-5) and

***Whereas,*** broadband network providers can now follow the activities of every subscriber who uses Internet Protocol networks and particularly the public Internet or who sends an email or text; and

***Whereas,*** those broadband network providers have the commercial motivation to use and share extensive and personal information about their customers, including a customer's real-time and static location; and

***Whereas****,* NASUCA has recognized thatnew technologies, including grid modernization technologies that utilize broadband, present scenarios in which a utility’s proposed disclosure to a third party of usage data, in conjunction with disclosure of personally identifying information, such as name, address, telephone number, billing history and account number, would pose substantially increased risks to customer privacy and safety;[[6]](#footnote-6)and

***Whereas,*** the utilization of a broadband telecommunications service creates new types of CPNI, such as detailed information on customer activities, geo-location data and device identifiers tied to both households and individuals within households, and to all of the connected devices in such households; and

***Whereas***, the disclosure of such data, in conjunction with the disclosure of location or identifying information, either intentionally or as a result of an unauthorized data breach, would make broadband customers more vulnerable to privacy invasions, criminal activity and other security and safety risks; and

***Whereas,*** a customer's ability to use broadband service with confidence that their personal data will not become a publicly traded commodity without their knowledge will increase trust in the service and promote its deployment;[[7]](#footnote-7) and

***Whereas****,* NASUCA supports the development of effective privacy and security policies and the protection of such private information as essential components of advanced telecommunications services; and

***Whereas****,* NASUCA supports advances in telecommunications technologies and services, provided they include effective consumer safeguards to protect privacy and prevent increased security risks to customers; and

***Whereas***, NASUCA supports effective privacy protections that will enhance customer confidence that their personal information will not be disclosed without their authorization;

***Now, therefore, be it resolved*,** that the following principles are essential to successful advances in telecommunications services, protection of private customer information, and public safety:

1. Individual personal consumer information such as name, address, account number, location, calling and search patterns and device-specific data (CPNI) obtained through use of broadband telecommunication networks should be protected from unauthorized disclosure;
2. With the exception of customer data necessary to provide broadband network service and necessary for customers to contact public safety officials, privacy of such information should be the default;
3. Before requesting a customer’s consent to disclosure of CPNI, for the limited purposes of providing broadband network service or for reasons of public safety, a Broadband Internet Access Service provider should be required to make a full and clear disclosure to the customer of the nature and scope of the information proposed to be disclosed, the identity of the proposed recipient and the intended use of the information by the proposed recipient;
4. Excepting disclosure of CPNI required by warrant or information necessary for 911 and advanced 911 services to function, Broadband Internet Access Service Providers should not disclose CPNI, particularly customer-identified usage data, to any third party including affiliates without the specific affirmative consent of the customer after receipt of complete information relevant to the disclosure and the intended uses of the information;
5. Third parties whom the customer has authorized to have access to CPNI, should be required to treat this information in a manner that protects such information and the privacy rights of the customer, and should be required to limit the use of such information to the specific purposes the customer has authorized;[[8]](#footnote-8)
6. Customers should be informed about CPNI privacy issues and encouraged to use reasonably available means, such as anti-virus tools and monitoring program activity, to prevent unauthorized use of their data.

***Be it further resolved***, that NASUCA authorizes its Executive Committee to take appropriate actions consistent with the terms of this resolution. The Executive Committee shall advise the membership of any proposed action prior to taking such action, if possible.  In any event, the Executive Committee shall notify the membership of any action taken pursuant to the resolution.

Submitted by Telecommunications Committee

1. See NASUCA Resolution 2007-5, Telephone Customer Privacy, Approved June 12, 2007, Denver, CO; and NASUCA Resolution 2011-08, Urging State and Federal Officials to Adopt Laws and Regulations Requiring Electric Utilities to Protect the Privacy Rights of Customers by Prohibiting Unauthorized Disclosure of Personal Information, Including Energy Usage Data, Approved November 15, 2011, St. Louis, Missouri (NASUCA Resolution 2011-08). [↑](#footnote-ref-1)
2. Federal Communications Commission, *In the Matter of Lifeline and Link Up Reform and Modernization (WC Docket No. 11-42), Telecommunications Carriers Eligible for Universal Service Support (WC Docket No. 09-097), Connect America Fund (WC Docket No. 10-90), Third Report and Order, Further Report and Order, and Order on Reconsideration*, (*Broadband Lifeline Order*,) Rel. April 27, 2016 at paras. 12, 30-32, 39-43. [↑](#footnote-ref-2)
3. 47 U.S.C. § 222. See, also, Federal Communications Commission, *In the Matter of Protecting the Privacy of Customers of Broadband and Other Telecommunications Services, WC Docket No. 16-106, NPRM, Rel. April 1, 2016*, (*Privacy NPRM*) at para. 35. [↑](#footnote-ref-3)
4. See, Protecting and Promoting the Open Internet, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, FCC No. 15-24 (rel. March 12.2015, at para 53-55. [↑](#footnote-ref-4)
5. FCC Privacy NPRM, at para. 4, citing Federal Trade Commission, Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers at 56 (2012), https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-report-protecting-consumer-privacy-era-rapid-change-recommendations/120326privacyreport.pdf (2012 FTC Privacy Report) [↑](#footnote-ref-5)
6. NASUCA Resolution 2011-08, Urging State and Federal Officials to Adopt Laws and Regulations Requiring Electric Utilities to Protect the Privacy Rights of Customers by Prohibiting Unauthorized Disclosure of Personal Information, Including Energy Usage Data, Approved November 15, 2011, St. Louis, Missouri. [↑](#footnote-ref-6)
7. Privacy NPRM at para. 309. [↑](#footnote-ref-7)
8. Enforcement of requirements pertaining to broadband privacy by third parties offering services or applications that utilize Broadband Internet Access Service has been carried out by the Federal Trade Commission. See Privacy NPRM at paras. 8-9. [↑](#footnote-ref-8)