



November 8, 2018

National Telecommunications and Information Administration  
U.S Department of Commerce  
1401 Constitution Ave NW, Room 4725  
ATTN: Privacy RFC  
Washington, DC 20230

RE: Docket No. 180821780-8780-1

Dear Sirs,

The National Association of State Utility Consumer Advocates (NASUCA)<sup>1</sup> appreciates the opportunity to provide comments in response to the National Telecommunications and Information Administration (NTIA or the Administration) request for comments published on September 26, 2018. On behalf of the U.S. Department of Commerce, NTIA requests comments on ways to advance consumer privacy and a proposed approach to consumer data privacy designed to provide high levels of protection for individuals, while giving organizations legal clarity and the flexibility to innovate.

NASUCA appreciates that the Administration is approaching this subject with an understanding of the complexity of the issues at hand, and a commitment to a transparent process. NASUCA has an Energy Privacy Resolution 2011-8<sup>2</sup> which states: "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." Similar perspectives can be

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<sup>1</sup> NASUCA is a voluntary association of 56 consumer advocate offices. NASUCA members represent the interests of utility consumers in 42 states, the District of Columbia, Puerto Rico, Barbados and Jamaica. NASUCA is incorporated in Florida as a non-profit corporation. NASUCA's full members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). NASUCA's associate and affiliate members also represent the interests of utility consumers but are not created by state law or do not have statewide authority. Some NASUCA member offices advocate in states whose respective state commissions do not have jurisdiction over certain telecommunications issues.

<sup>2</sup> <http://nasuca.org/energy-privacy-resolution-2011-8/>

found in popular culture, such as that of Tim Cook, the chief executive of Apple, who called privacy a “human right.”<sup>3</sup>

It is the view of NASUCA and its members that consumers should be in charge of their personal data. Privacy of such information should be the default; consumers should not have to take action in order to protect their privacy. Utilities should be required to limit their uses of personal customer information to those uses that are required for the provision of utility service, unless after full disclosure, the customer affirmatively consents to the use of the customer’s information for other purposes.<sup>4</sup>

As stated in its 2016-02 Resolution,<sup>5</sup> NASUCA also supports effective privacy protections that will enhance consumer confidence that their personal information will not be disclosed without their authorization. Privacy of individual personal consumer information should be the default; consumers should not have to take action in order to protect their privacy. Before requesting a consumer’s consent to disclosure of consumer information, a utility should be required to make a full disclosure to the consumer 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.

NASUCA welcomes the opportunity to continue its participation in this proceeding and looks forward to the next steps that the Administration will take to achieve US consumer privacy.

kindest Regards,



David Springe

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National Association of State Utility Consumer Advocates

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<sup>3</sup> The Economist, America should borrow from Europe’s data-privacy law, April 5, 2018

<sup>4</sup> <http://nasuca.org/energy-privacy-resolution-2011-8/>

<sup>5</sup> <http://nasuca.org/2016-02-urging-federal-officials-to-ensure-the-privacy-rights-of-customers-using-21st-century-telecommunications-services/>

**NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES  
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**

*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; and

*Whereas*, new technologies, particularly grid modernization technologies, present scenarios in which a utility's proposed disclosure to a third party of "smart meter" 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; and

*Whereas*, smart meter data, including real-time household energy usage data, can reveal how many people are present in a particular household, when people are present, activities that are occurring at a given time, what appliances are in use, the characteristics of the appliances being used, and the like; and

*Whereas*, the disclosure of such data, in conjunction with the disclosure of location or identifying information, would make energy customers more vulnerable to privacy invasions, criminal activity and other security risks; and

*Whereas*, NASUCA supports the development of effective privacy and security policies and the protection of such private information as essential components of cost-effective successful grid modernization technologies; and

*Whereas*, NASUCA supports cost-effective grid modernization technologies, 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 utilities will refrain from unauthorized disclosure of personal information, including energy usage data and also supports effective remedies for unauthorized disclosures;

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

1. Individual personal consumer information such as name, address, account number and energy usage, particularly customer-specific energy usage obtained through “smart meters,” must be protected from unauthorized disclosure;
2. Privacy of such information should be the default; consumers should not have to take action in order to protect their privacy;
3. Responsible state and federal officials, including state public utility commissions, should adopt rules requiring utilities and others to protect the privacy of customer information, including rules informing consumers of the nature and scope of any information that may be disclosed to others, to whom the information will be disclosed and the intended uses for such information by the recipients;
4. Before requesting a customer’s consent to disclosure of customer information, a utility should be required to make a full 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;
5. Utilities must not disclose customer information, particularly customer-identified energy usage data, to any third party without the specific affirmative written consent of the consumer after receipt of complete information relevant to the disclosure and the intended uses of the information;
6. Utilities must be required to limit their uses of personal customer information to those uses that are required for the provision of utility service, unless after full disclosure, the customer affirmatively consents to the use of the customer’s information for other purposes;
7. Third parties whom the customer has authorized to have access to personal information, including customer-specific energy usage information, must be required to treat this information in a manner that protects the information and privacy rights of the consumer, and should be required to limit the use of such information for the specific purposes the customer authorized;

***Be it further resolved,*** that NASUCA authorizes its Executive Committee to develop specific positions and 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 Consumer Protection Committee  
Approved November 15, 2011  
St. Louis, Missouri  
Abstention: District of Columbia

**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)<sup>1</sup>; and

*Whereas*, the Federal Communications Commission (FCC) has deemed Broadband Internet Access Service an essential telecommunications service;<sup>2</sup> 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);<sup>3</sup> 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;<sup>4</sup> and

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

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<sup>1</sup> 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).

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.*

*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;<sup>5</sup> 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 that new 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;<sup>6</sup> 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;<sup>7</sup> and

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<sup>5</sup> 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)

<sup>6</sup> 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.

<sup>7</sup> Privacy NPRM at para. 309.

*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;<sup>8</sup>

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<sup>8</sup> 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.

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  
Approved June 6, 2016  
New Orleans, Louisiana