

Date of Hearing: April 24, 2019

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Miguel Santiago, Chair

AB 523 (Irwin) – As Introduced February 13, 2019

SUBJECT: Telecommunications: customer right of privacy

SUMMARY: Prohibits a telephone or telegraph corporation from sharing specified information about a noncommercial subscriber without first obtaining the subscriber's written consent.

Specifically, **this bill:**

- 1) Clarifies that the prohibition on sharing specified information about a subscriber, without first obtaining the subscriber's written consent, applies to noncommercial subscribers.
- 2) Prohibits a telephone or telegraph corporation from making available to any other person or corporation, without first obtaining the noncommercial subscriber's written consent, customer proprietary network information (CPNI) of the noncommercial subscriber or the geolocation information of the noncommercial subscriber.
- 3) Provides that the prohibition on releasing specified personal information about a noncommercial subscriber also does not apply to:
 - a) Information required to deliver mobile telephony service to the noncommercial subscriber; or,
 - b) Information required during a customer-initiated transaction to effectuate a change in the mobile telephony service of the noncommercial individual subscriber.
- 4) Authorizes a telephone corporation, subject to obtaining the express written consent or federal opt-out approval of the subscriber, to share CPNI of a mobile telephony services subscriber with its agents and affiliates that provide communications-related services for the purpose of marketing communications-related services to that subscriber.

EXISTING LAW:

- 1) Prohibits a telephone or telegraph corporation from making available to any other person or corporation, without first obtaining the residential subscriber's consent, in writing, any of the following information:
 - a) The subscriber's personal calling patterns, including any listing of the telephone or other access numbers called by the subscriber, but excluding the identification to the person called of the person calling and the telephone number from which the call was placed, subject to specified restrictions, and also excluding billing information concerning the person calling which federal law or regulation requires a telephone corporation to provide to the person called;
 - b) The residential subscriber's credit or other personal financial information, except when the corporation is ordered by the California Public Utilities Commission (CPUC) to provide this information to any electrical, gas, heat, telephone, telegraph, or water

- corporation, or centralized credit check system, for the purpose of determining the creditworthiness of new utility subscribers;
- c) The services which the residential subscriber purchases from the corporation or from independent suppliers of information services who use the corporation's telephone or telegraph line to provide service to the residential subscriber; or,
 - d) Demographic information about individual residential subscribers, or aggregate information from which individual identities and characteristics have not been removed. (Public Utilities Code (PUC) Section 2891)
- 2) Provides that any residential subscriber who gives his or her written consent for the release of one or more of the specified categories of personal information shall be informed by the telephone or telegraph corporation regarding the identity of each person or corporation to whom the information has been released, upon written request. The corporation shall notify every residential subscriber of specified provisions whenever consent is requested, as specified. (PUC Section 2891)
- 3) Authorizes any residential subscriber who has given written consent, as specified, for the release of one or more of the specified categories of personal information to rescind their consent upon submission of a written notice to the telephone or telegraph corporation. The corporation shall cease to make available any personal information about the subscriber, within 30 days following receipt of notice given pursuant to this subdivision. (PUC Section 2891)
- 4) Provides that the prohibitions on releasing specified personal information does not apply to any of the following:
- a) Information provided by residential subscribers for inclusion in the corporation's directory of subscribers;
 - b) Information customarily provided by the corporation through directory assistance services;
 - c) Postal ZIP Code information;
 - d) Information provided under supervision of the CPUC to a collection agency by the telephone corporation exclusively for the collection of unpaid debts;
 - e) Information provided to an emergency service agency responding to a 911 telephone call or any other call communicating an imminent threat to life or property;
 - f) Information provided to a law enforcement agency in response to lawful process;
 - g) Information which is required by the CPUC pursuant to its jurisdiction and control over telephone and telegraph corporations;
 - h) Information transmitted between telephone or telegraph corporations pursuant to the furnishing of telephone service between or within service areas;

- i) Information required to be provided by the corporation pursuant to rules and orders of the CPUC or the Federal Communications Commission (FCC) regarding the provision over telephone lines by parties other than the telephone and telegraph corporations of telephone or information services;
 - j) The name and address of the lifeline customers of a telephone corporation provided by that telephone corporation to a public utility for the sole purpose of low-income ratepayer assistance outreach efforts. The telephone corporation receiving the specified information requested may charge the requesting utility for the cost of the search and release of the requested information; or,
 - k) Information provided in response to a request relating to specified crimes. (PUC Section 2891)
- 5) Establishes the California Consumer Privacy Act of 2018 which establishes various consumer rights over their personal information. (Civil Code Section 1798.130 et seq.)

FISCAL EFFECT: Unknown. This bill has been keyed non-fiscal by the Legislative Counsel.

COMMENTS:

- 1) **Authors Statement:** According to the author, “The sale of your mobile phone’s geo-location is a fundamental violation of a subscriber’s privacy. Law enforcement must obtain a warrant under both state and federal law to access your geo-location from a telecommunications provider, an appropriate safeguard that recognizes the sensitive nature of a person’s current and past location. The real-world implications for personal safety are frightening when this information is shared with non-law enforcement. We must provide Californians with the tools to protect themselves, especially as the [FCC] fails to enforce federal protections.”
- 2) **Background:** The FCC is an independent federal agency tasked with promoting the development of competitive communications networks, as well as ensuring universal service, consumer protection, public safety, and national security. In California, the CPUC regulates the telecommunications industry by developing and implementing policies to ensure fair, affordable universal access to necessary services, developing rules and regulatory tools, removing barriers that prevent a competitive market, and reducing or eliminating burdensome regulations.
- 3) **CPNI:** CPNI is highly sensitive personal information a telecommunications provider has on its customers. This can include information such as phone numbers called by a customer, the frequency, duration, and timing of such calls; and any services purchased by the customer. Such personal information is solely available to the telecommunications provider by virtue of the relationship between the provider and the customer. As such, telecommunications providers have a general duty to protect the confidentiality of CPNI.

Federal law requires telecommunications providers to take specific steps to ensure that CPNI is adequately protected from unauthorized disclosures. Following the 2007 FCC CPNI Order, telecommunications providers are only allowed to use, disclose, or permit access to a

customer's CPNI in limited circumstances: (1) as required by law, (2) with the customer's approval; or (3) in the provision of telecommunications services from which such information is derived or service necessary to or used in the provision of such service. In addition, federal law guarantees the customer the right to obtain access to their own CPNI.

- 4) **Telephone Privacy:** California's telephone privacy rules prohibits a telephone company from making available to any other person or corporation, specified personal information, without first obtaining the residential subscriber's written consent. Although the statutes apply to "residential" customers, the language was intended to create a distinction between business customers and customers that use their telephones for personal use. References to "residential subscribers" might have been clear when most telephone customers only used landlines. But with the advent of wireless and internet protocol (IP) based telephone systems, which do not distinguish between residential and non-residential customers, the clarity of applying California's telephone privacy rules to such services have not kept pace. In addition, the types of information telecommunications providers are now able to collect from a wireless or IP service subscriber compared to a landline subscriber has greatly expanded. This bill clarifies California's telephone privacy rules by specifying that the prohibition on sharing specified information applies to noncommercial subscribers.
- 5) **California Consumer Privacy Act:** In California, the State Constitution, unlike the U.S. Constitution, expressly protects an individual's right to privacy. In years past, what is included in the state's constitutional right to privacy has mostly been developed in a body of case law that tends to be very fact-specific. In 2018, the Legislature passed AB 375 (Chau) Chapter 55, Statutes of 2018, which established the California Consumer Privacy Act (CCPA). The CCPA contained 21 specific statutes many containing detailed subparts that protects Californians right to privacy and control their personal information. The CCPA proposes to protect the privacy of many attributes of consumer personal information including geo-location, health information, financial information, social security numbers, content and data consumption, and browsing and application usage histories. Furthermore, the CCPA enables public participation in the Attorney General's efforts to adopt further regulations. The CCPA takes effect on January 1, 2020 and there are a number of additional CCPA legislation pending in the current legislative session.
- 6) **Joint Petition to Update Privacy Rules:** In 2014, the CPUC issued Decision 14-01-035, which expressed its intent to monitor developing wireless telecommunications technology that would give rise to the need for additional privacy rules, however, it declined to open a rulemaking at the time. In March 2018, the Consumer Federation of California and the Utility Reform Network filed a joint petition to the CPUC requesting it to modernize its privacy rules for wireless telecommunications providers. The petition points to a prior Alternative Proposed Decision by the CPUC which determined that there were gaps in existing privacy protection which include, a need to update the states CPNI requirements, which were enacted in 1986, well before the development of either current cell phone technologies of smartphones. In November 2018, the CPUC denied the joint petition arguing that given the recent enactment of the CCPA, it is not certain that a review of wireless providers' privacy practices in California is needed at this time.

This bill prohibits a telephone company from making available a customer's CPNI or geolocation information, without first obtaining the noncommercial subscriber's written consent. According to the author, the bill does not seek to enact the suggested rules in the

joint petition in full, but seeks to address a narrow subset that focuses on updating the technological references and inclusion of geo-location.

- 7) **Arguments in Support:** According to the Public Advocates Office, “This bill would require wireless carriers to obtain written consent from their customers before they share or sell a customer’s real-time location information to other individuals or businesses. This is important because recent investigations have demonstrated that wireless carriers have been selling highly-accurate, real-time customer location data to companies who resell the information to other companies without obtaining a customer’s consent. We support this bill because it would help put an end to this practice and strengthen privacy protections that customers deserve.”
- 8) **Arguments in Opposition:** According to CTIA, “To the extent the proposed legislation is driven by a concern that geolocation information is especially sensitive and requires additional protections, then all businesses collecting that data should be subject to those enhanced restrictions, and not be limited to telecommunications providers. The protection of location data should be treated the same regardless of which entity collects or possesses the data. AB 523 is unnecessary because the California Consumer Privacy Act (CCPA) already provides rights and obligations related to consumers’ geo-location data [...] AB 523 will cause consumer confusion [...] AB 523 should limit the affirmative opt-in requirements to precise geolocation data [...] For these reasons, CTIA respectfully opposes AB 523 unless it is amended.”
- 9) **Prior Legislation:** AB 375 (Chau) of 2018 establishes the California Consumer Privacy Act of 2018 to ensure the privacy of Californians’ personal information through various consumer rights. *Status: Chaptered by the Secretary of State – Chapter 55, Statutes of 2018.*
- 10) **Double-referral:** This bill is doubled referred, and if passed by this Committee, will be referred to the Assembly Committee on Privacy and Consumer Protection.

REGISTERED SUPPORT / OPPOSITION:

Support

Public Advocates Office

Opposition

CTIA – The Wireless Association (unless amended)

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