

August 3, 2018

Ajit Pai, Chairman
Michael O’Rielly, Commissioner
Brendan Carr, Commissioner
Jessica Rosenworcel, Commissioner
Federal Communications Commission
455 12th Street Southwest
Washington, DC, 20554

Dear Chairman Pai, Commissioner O’Reilly, Commissioner Carr, and Commissioner Rosenworcel,

On August 4, 2015, Electronic Privacy Information Center (“EPIC”) and a coalition of civil society organizations, legal scholars, technology experts filed a Petition with the FCC asking the Commission to repeal 47 C.F.R. § 42.6, the regulation that requires telephone companies to retain the detailed call records of their customers (“the data retention mandate”).¹ The coalition explained that the regulation was unduly burdensome and ineffectual and posed an ongoing threat to the privacy and security of American consumers. By notice published on May 17, 2017, the FCC requested public comment on EPIC’s petition.² Every comment submitted to the FCC expressed support for repealing the data retention mandate.³

Three years have now passed since EPIC and the coalition filed the Petition to repeal the outdated data retention mandate. Now is the time for the FCC to act. The mandate puts consumer privacy at risk while also placing an unnecessary regulatory burden on carriers. The rule states:

Each carrier that offers or bills toll telephone service shall retain for a period of 18 months such records as are necessary to provide the following billing information about telephone toll calls: the name, address, and telephone number of the caller, telephone number called, date, time and length of the call. Each carrier shall retain this information for toll calls that it bills whether it is billing its own toll service customers for toll calls or billing customers for another carrier.⁴

As we explained in the 2015 Petition:

¹ EPIC, Petition to Repeal 47 C.F.R. § 42.6 (“Retention of Telephone Records”) (Aug. 4, 2015), <https://epic.org/privacy/fcc-data-retention-petition.pdf>.

² FCC, *Comment Sought on EPIC et al Petition For Rulemaking To Repeal 47 C.F.R. § 42.6 (“Retention of Telephone Records”)*, Public Notice, Docket No. 17-130, (May 17, 2017), http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0517/DA-17-472A1.pdf.

³ Docket 17-130, *Petition for Rulemaking to Repeal 47 C.F.R. 42.6 (Retention of Telephone Records)*, https://www.fcc.gov/ecfs/search/filings?proceedings_name=17-130&sort=date_disseminated,DESC.

⁴ FCC Retention of Telephone Toll Records, 47 C.F.R. § 42.6.

- The mass retention of telecommunications records implicates privacy and freedom of association of millions of Americans who are suspected of no wrongdoing.
- The retention of sensitive phone records increases the likelihood of large-scale data breaches like the OPM data breach in 2015
- Modern non-measured, bundled phone billing makes the rule unnecessary.
- The US data retention requirement for telephone records is at odds with international law and fundamental rights

The legal argument for repeal of the data retention mandate has increased since EPIC’s initial filing. On June 22, 2018, the United States Supreme Court declared that cell phone location records are protected under the Fourth Amendment.⁵ As we anticipated in the original Petition, the retention of cell phone data implicates constitutional interests.⁶ Moreover, Justice Alito took the opportunity in *Carpenter* to underscore how the some of the greatest threats to individual privacy are posed by the purely commercial use of consumer data.⁷ In addition, members of Congress have recently expressed alarm over privacy scandals involving massive data collection by smartphones. Given the continually expanding threats to consumer privacy, the FCC must act on EPIC’s Petition and repeal the data retention mandate.

We urge the FCC to promptly begin a Rulemaking to repeal 47 C.F.R. § 42.6 ("Retention of Telephone Records") in its entirety.

Sincerely,

Marc Rotenberg
Executive Director

Jeramie Scott
National Security Counsel

Sam Lester
Consumer Privacy Counsel

Christine Bannan
Administrative Law and Policy Counsel

⁵ *Carpenter v. United States*, 136 S. Ct. 2206 (2018).

⁶ *Id.*

⁷ *Id.* at 2261 (Alito, J. dissenting) (“today, some of the greatest threats to individual privacy may come from powerful private companies that collect and sometimes misuse vast quantities of data about the lives of ordinary Americans.”)