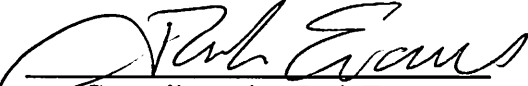
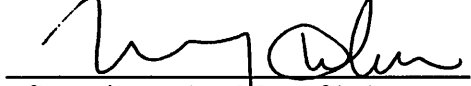
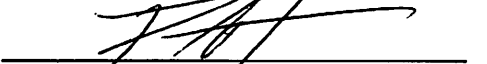



Councilmember Phil Mendelson


Councilmember Brandon T. Todd


Councilmember Jack Evans


Councilmember Mary Cheh


Councilmember Robert C. White


Councilmember Anita Bonds


Councilmember Elissa Silverman

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To provide telecommunications customers with data privacy protections, to provide telecommunications carriers with instructions for providing customers and law enforcement with notice in the event of data breaches, and to provide remedies for customers and the District when telecommunications carriers fail to adhere to the provisions of the act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Broadband Internet Privacy Act of 2017".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Broadband Internet access service" or "BAIS" means a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. This term also encompasses any service that the Commission finds to be providing a functional

37 equivalent of the service described in the previous sentence, or that is used to evade the
38 protections set forth in this part.

39 (2) "Broadband Internet access service provider" or "BIAS provider" means a
40 person engaged in the provision of BIAS.

41 (3) "Breach" means any instance in which a person, without authorization or
42 exceeding authorization, has gained access to, used, or disclosed customer proprietary
43 information.

44 (4) "Call detail information" means any information that pertains to the
45 transmission of specific telephone calls, including, for outbound calls, the number called, and the
46 time, location, or duration of any call and, for inbound calls, the number from which the call was
47 placed, and the time, location, or duration of any call.

48 (5) "Commission" means the Public Service Commission.

49 (6) "Customer" means an applicant, current subscriber, or former subscriber to a
50 telecommunications service.

51 (7) "Customer proprietary information" or "customer PI" means any of the
52 following a carrier acquires in connection with its provision of telecommunications service:

53 (A) Individually identifiable customer proprietary network information;

54 (B) Personally identifiable information ("PII"); or

55 (C) Content of communications.

56 (8) "Customer proprietary network information" means information:

57 (A) That relates to the quantity, technical configuration, type, destination,
58 location, and amount of use of a telecommunications service subscribed to by any customer of a

59 telecommunications carrier, and that is made available to the carrier by the customer solely by
60 virtue of the carrier-customer relationship; or

61 (B) Contained in the bills pertaining to telephone exchange service or
62 telephone toll service received by a customer of a carrier; provided, that the term “customer
63 proprietary network information” shall not include subscriber list information.

64 (9) “Interconnected Voice over Internet protocol” or “VOIP” is a service that
65 enables real-time, two-way voice communications, requires a broadband connection from the
66 user's location, requires Internet protocol-compatible customer premises equipment (CPE); and
67 permits users generally to receive calls that originate on the public switched telephone network
68 and to terminate calls to the public switched telephone network.

69 (10) “Language spoken at home” means the primary language spoken in a
70 household.

71 (11) “Material change” means any change that a customer, acting reasonably
72 under the circumstances, would consider important to his or her decisions regarding his or her
73 privacy.

74 (12) “Non-sensitive customer proprietary information” means information that is
75 deemed not “sensitive customer proprietary information.”

76 (13) “Opt-in approval” means a method for obtaining customer consent to use,
77 disclose, or permit access to the customer's proprietary information. This approval method
78 requires that the carrier obtain from the customer affirmative, express consent allowing the
79 requested usage, disclosure, or access to the customer proprietary information after the customer
80 is provided notice of the carrier's request.

81 (14) "Opt-out approval" means a method for obtaining customer consent to use,
82 disclose, or permit access to the customer's proprietary information. Under this approval method,
83 a customer is deemed to have consented to the use, disclosure, or access to the customer's
84 proprietary information if the customer has failed to object to the approval after the customer is
85 provided notice of the carrier's request.

86 (15) "Person" means an individual, partnership, association, joint-stock company,
87 trust, or corporation.

88 (16) "Personally identifiable information" means any information that is linked or
89 reasonably linkable to an individual or device.

90 (17) "Sensitive customer proprietary information" or "sensitive customer PI"
91 includes financial information, health information, information pertaining to children Social
92 Security numbers, precise geo-location information, content of communications, call detail
93 information, and Internet browsing history, application usage history, and the functional
94 equivalents of either.

95 (18) "Subscriber" means any one of the following:

96 (A) The party identified in the account records of a common carrier as
97 responsible for payment ("responsible party") of the telephone bill;

98 (B) Any adult person authorized by the responsible party to change
99 telecommunications services or to charge services to the account; or

100 (C) Any person contractually or otherwise lawfully authorized to represent
101 the responsible party.

102 (19) "Subscriber list information" means any information that identifies the names
103 of subscribers of a carrier or subscribers' telephone numbers, addresses, primary advertising
104 classifications, or any combination of names, numbers, addresses, or classifications.

105 (20) "Telecommunications" means the transmission, between or among points
106 specified by the user, of information of the user's choosing, without change in the form or
107 content of the information as sent and received.

108 (21) "Telecommunications carrier" means any provider of telecommunications
109 services, excluding aggregators of telecommunications services. "Telecommunications carrier"
110 includes an interconnected VOIP service provider.

111 (22) "Telecommunications service" means the offering of telecommunications for
112 a fee directly to the public, or to such classes of users as to be effectively available directly to the
113 public, regardless of the facilities used. "Telecommunications service" includes interconnected
114 VOIP service.

115 Sec. 3. Telecommunications carrier notice requirements.

116 (a) A telecommunications carrier shall notify its customers of its privacy policies. Such
117 notice shall be clear and conspicuous, in language that is comprehensible and not misleading,
118 and include the following information:

119 (1) The types of customer proprietary information that the telecommunications
120 carrier collects by virtue of its provision of telecommunications service and how it uses that
121 information;

122 (2) A description of the circumstances the telecommunications carrier discloses or
123 permits access to each type of customer proprietary information that it collects;

124 (3) A description of the categories of entities to which the carrier discloses or
125 permits access to customer proprietary information and the purposes for which the customer
126 proprietary information will be used by each category of entities;

127
128 (4) Notice of customers' opt-in approval or opt-out approval rights with respect to
129 their customer proprietary information; and

130 (5) Access to a mechanism for customers to grant, deny, or withdraw approval for
131 the telecommunications carrier to use, disclose, or provide access to customer proprietary
132 information.

133 (b) Notice required under subsection (a) of this section shall be made available to
134 prospective customers prior to the purchase of service, and constantly available through:

135 (1) A clear and conspicuous link on the telecommunications carrier's homepage;

136 (2) The carrier's application ("app"), if it provides one for account management
137 purposes; and

138 (3) Any functional equivalent to the carrier's homepage or app.

139 (c) A telecommunications carrier shall provide existing customers with advance notice of
140 one or more material changes to the carrier's privacy policies.

141 (d) A telecommunications carrier shall provide the information required pursuant to
142 subsections (a) and (c) of this section in the language spoken at home for all District populations
143 with at least 50 households speaking a language, as identified by the most recent United States
144 Census.

145 Sec. 4. Customer approval.

146 (a) Except where specifically exempted, a telecommunications carrier shall obtain opt-
147 out approval from a customer to use, disclose, or permit access to any of the customer's non-
148 sensitive customer proprietary information.

149 (b) Except where specifically exempted, a telecommunications carrier shall obtain opt-in
150 approval from a customer to use, disclose, or permit access to any of the customer's sensitive
151 customer proprietary information.

152 (c) A telecommunications carrier may use, disclose, or permit access to non-sensitive
153 customer proprietary information without customer approval for the following purposes:

154 (1) In the telecommunications carrier's provision of the telecommunications
155 service from which such information is derived, or in its provision of services necessary
156 to, or used in, the provision of a service;

157 (2) To initiate, render, bill, and collect for telecommunications service;

158 (3) To protect the rights or property of the telecommunications carrier, or to
159 protect customers from fraudulent, abusive, or unlawful use of the service;

160 (4) To provide any inbound marketing, referral, or administrative services to the
161 customer for the duration of a real-time interaction, if such interaction was initiated by
162 the customer;

163 (5) To provide location information or non-sensitive customer proprietary
164 information to a public-safety answering point in order to respond to the user's request for
165 emergency services, or inform members of the user's immediate family of the user's
166 location in an emergency situation.

167 (d) A telecommunications carrier shall make available a simple, easy-to-use mechanism
168 for customers to grant, deny, or withdraw opt-in approval or opt-out approval at any time. The

169 mechanism shall be clear, in language that is comprehensible and not misleading, and made
170 available at no additional cost to the customer.

171 Sec. 5. Data security.

172 (a) A telecommunications carrier must take reasonable measures to protect customer PI
173 from unauthorized use, disclosure, or access.

174 (b) Any security measures taken by a telecommunications carrier to implement the
175 requirements of this act shall appropriately take into account each of the following factors:

176 (1) The nature and scope of the telecommunications carrier's activities;

177 (2) The sensitivity of the data it collects;

178 (3) The size of the telecommunications carrier; and

179 (4) Technical feasibility.

180 (c) A telecommunications carrier may employ any lawful security measures that allow it
181 to implement the requirements of this act.

182 Sec. 6. Data breach notification.

183 (a) A telecommunications carrier shall notify affected customers of any breach without
184 unreasonable delay and in any event no later than 30 calendar days after the carrier determines
185 that a breach has occurred, subject to law enforcement's needs, unless the telecommunications
186 carrier can reasonably determine that no harm to customers is reasonably likely to occur as a
187 result of the breach.

188 (b) The customer notification required to be provided pursuant to the requirement in
189 subsection (a) of this section shall include the following information:

190 (1) The date, estimated date, or estimated date range of the breach of security;

191 (2) A description of the customer PI that the telecommunication carrier identifies
192 as having been breached;

193 (3) Contact information for the telecommunications carrier to inquire about the
194 breach of security and the customer PI that the telecommunications carrier maintains about that
195 customer;

196 (4) Contact information for the Commission and any District regulatory agencies
197 relevant to the customer and the service; and

198 (5) Contact information for appropriate authorities with national credit-reporting
199 agencies and the steps customers can take to guard against identity theft, including any credit
200 monitoring, credit reporting, credit freezes, or other consumer protections the
201 telecommunications carrier is offering customers affected by the breach of security.

202 (c) A telecommunications carrier required to provide notification to a customer pursuant
203 to the requirement in subsection (a) of this section shall provide such notice by one or more of
204 the following methods:

205 (1) Written notification sent to either the customer's email address or the postal
206 address on record of the customer, or, for former customers, to the last postal address
207 ascertainable after reasonable investigation using commonly available sources; or

208 (2) Other electronic means of active communications agreed upon by the
209 customer for contacting that customer for data breach notification purposes.

210 (d) A telecommunications carrier must notify the Commission and the Attorney General
211 of any breach affecting 50 or more customers no later than 7 days after the carrier reasonably
212 determines that a breach has occurred.

213 (e) A telecommunications carrier shall maintain a record, electronically or in some other
214 manner, of any breaches and notifications made to customers.

215 Sec. 7. Prohibition on waiver of privacy.

216 (a) A BIAS provider shall not condition, or effectively condition, provision of BIAS on a
217 customer's agreement to waive privacy rights guaranteed by District or federal law or regulation.
218 A BIAS provider shall not terminate service or otherwise refuse to provide BIAS as a direct or
219 indirect consequence of a customer's refusal to waive any privacy rights.

220 (b) A BIAS provider shall not offer a financial incentive in exchange for a customer's
221 approval to use, disclose, or permit access to the customer's proprietary information.

222 Sec. 8. Remedies.

223 (a) A person adversely affected by a telecommunications carrier's violation of this act has
224 a claim for appropriate relief, including damages, injunctive relief, and reasonable attorneys'
225 fees.

226 (b) For any violation of this section, the Attorney General, may commence an action on
227 behalf of the District to recover a forfeiture of not more than \$50,000 for the first violation and
228 not more than \$100,000 for each subsequent violation.

229 Sec. 9. Fiscal impact statement.

230 The Council adopts the fiscal impact statement in the committee report as the fiscal
231 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
232 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

233 Sec. 10. Effective date.

234 The act shall take effect following approval by the Mayor (or in the event of veto by the
235 Mayor, action by the Council to override the veto), a 30-day period of congressional review as

236 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
237 24, 1973, (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
238 Columbia Register.