

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Protecting the Privacy of Customer of Broadband ) WC Docket No. 16-106  
and Other Telecommunications Services )

**REPLY OF INCOMPAS**

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March 16, 2017

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**REPLY OF INCOMPAS**

INCOMPAS, by its undersigned counsel, hereby submits its Reply in support of the Petition for Reconsideration filed by Level 3 Communications, LLC (“Level 3”) of the Commission’s *Broadband Privacy Order*.<sup>1</sup>

**I. INTRODUCTION**

In the *Broadband Privacy Order*, the Commission broadened the existing enterprise exemption in acknowledgement of the ability of “sophisticated enterprise customers” to negotiate and contract for privacy and data security protections that specifically address their business needs. The exemption, which had previously been limited to authentication obligations, was applied to “all privacy and data security rules under Section 222 for the provision of telecommunications services other than BIAS to enterprise customers.”<sup>2</sup> However, in order to qualify for the exemption, enterprise voice service providers are required to address two conditions in a carrier-customer contract that will ensure that “business customers have identifiable protections under Section 222”—the inclusion of terms that address the issues of

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<sup>1</sup> *Protecting the Privacy of Customers and Broadband and Other Telecommunications Services*, Report & Order, 31 FCC Rcd 13911 (rel. Nov. 2, 2016) (“*Broadband Privacy Order*” or “*Order*”); 47 C.F.R. § 64.2010.

<sup>2</sup> *Id.* at ¶ 307.

transparency, choice, data security, and data breach and a “mechanism” for the customer to communicate with the carrier about privacy and data security-related concerns.<sup>3</sup> As Level 3 notes in its Petition for Reconsideration, these conditions are limitations that can lead to impractical outcomes, hindering the ability of enterprise service providers to better meet the privacy and data security needs of their enterprise customers. These limitations also reduce the flexibility of these carriers to provide tailored and innovative privacy solutions to their enterprise customers—tailored offerings that enterprise customers demand. As explained by Level 3 and discussed below, the additional conditions imposed by the *Order* place additional and unnecessary administrative burdens on carriers. INCOMPAS agrees with Level 3 that it is prudent for the Commission to allow the plain language of Section 222 to govern the enterprise carrier-customer relationship, rather than apply the prerequisite conditions adopted in the *Order*. Such an approach received no opposition in the underlying proceeding or in response to Level 3’s Petition for Reconsideration. Accordingly, the Commission should grant Level 3’s Petition for Reconsideration.

## **II. THE CONDITIONS PLACED ON THE PRIVACY AND DATA SECURITY EXEMPTION FOR ENTERPRISE VOICE CUSTOMERS ARE UNNECESSARY AND BURDENSOME.**

The Commission’s decision to broaden the business customer exemption was appropriately made in recognition of the intrinsic differences between enterprise voice service and mass-market retail voice service. Enterprise voice customers maintain a different set of privacy and data security expectations and needs than an individual broadband Internet access service (“BIAS”) subscriber, and the Commission rightly recognized that enterprise providers need additional flexibility to deliver tailored privacy protections. Additionally, enterprise

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<sup>3</sup> *Id.* at ¶ 306.

customers are accustomed to negotiating for “the appropriate protection of CPNI in their service and agreements” and possess the sophistication to know how they want their private company information to be used.<sup>4</sup> As a result, the Commission expanded the scope of the enterprise exemption to include all privacy and security rules under Section 222 for non-BIAS telecommunication services.

However, the *Broadband Privacy Order* needlessly conditioned the exemption to require providers to specifically address the issues of transparency, choice, data security, and data breach in the carriers’ contracts with enterprise customers.<sup>5</sup> These conditional requirements reduce the flexibility of enterprise service providers to offer tailored and innovative privacy solutions to their enterprise customers—tailored offerings that enterprise customers demand—and are unnecessary. As noted by Level 3 in its reconsideration petition, the Commission also “fails to explain how . . . providers’ continued duty to comply with Section 222 is insufficient to achieve” the Commission’s goal of ensuring that enterprise customers have sufficient privacy protections in place.<sup>6</sup>

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<sup>4</sup> *Id.* at ¶ 307 (quoting *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115, WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007) at 6943, ¶ 25).

<sup>5</sup> 47 C.F.R. § 64.2010. Additionally, providers must include in their service agreement a “mechanism for the customer to communicate with the carrier about privacy and data concerns.” *Broadband Privacy Order* at ¶ 306.

<sup>6</sup> Petition for Reconsideration of Level 3 Communications, Inc., Protecting the Privacy of Customers of Broadband and Other Telecommunications Services, WC Docket No. 16-106, at 6 (Jan. 3, 2017) (“Level 3 Petition”). In rejecting the contention that enterprise services should be exempted entirely from the Commission’s rules, the *Broadband Privacy Order* cites only to an INCOMPAS ex parte letter requesting that the plain language of Section 222 be allowed to govern the enterprise carrier-customer relationship. See *Broadband Privacy Order* at n.901.

In addition to being unnecessary, given an enterprise customer's experience and sophistication negotiating for adequate privacy and data security protections and the providers' incentives to market their privacy and data security solutions to customers, the limitations placed on enterprise service providers are impractical. Enterprise service providers often serve hundreds, if not thousands of clients, and as Level 3 notes, it would be "impracticable to renegotiate all of these existing agreements" to ensure that policies meeting the Commission's conditions are in place.<sup>7</sup> INCOMPAS members seeking to serve customers using the exemption for enterprise customers are also likely to encounter the same administrative burdens Level 3 discusses in its petition with respect to customer confusion and potential inconsistencies between existing contracts and the application of the Commission's new privacy provisions.<sup>8</sup> INCOMPAS similarly urges the Commission to reconsider the *Broadband Privacy Order* and exempt enterprise providers from Subpart U by rule. No opposition has been filed in the underlying proceeding or in response to Level 3's Petition, and Section 222 will continue to ensure that enterprise customers will be protected.

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<sup>7</sup> Level 3 Petition at 3.

<sup>8</sup> See Level 3 Petition at 4-5.

### **III. CONCLUSION**

For the reasons outlined above, INCOMPAS encourages the Commission to reconsider the contractual requirements that carriers must meet in order to qualify for the privacy and data security exemption for enterprise voice customers. A privacy framework based on the plain language of Section 222 will allow providers to meet their statutory obligations and provide the necessary flexibility to meet the needs of their enterprise customers.

Respectfully submitted,

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