

M e m o r a n d u m

Date: April 17, 2008

To: The Commission
(Meeting of April 24, 2008)

From: Pamela Loomis, Deputy Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 2385 (Ruskin) – Telecommunications: mobile
telephony services: release of subscriber information.
As Introduced: February 21, 2008**

**LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT WITH
TECHNICAL AMENDMENTS**

SUMMARY OF BILL:

This bill would prohibit non-telecommunications carriers from publishing the telephone numbers of wireless subscribers without the express consent of the subscriber, similar to the express consent that a provider of mobile telephony service must obtain under Public Utilities Code (PU Code) Sec. 2891.1 (b) to publish a subscriber's telephone number.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

- Current PU Code 2891.1 (b) prohibits wireless carriers from providing the name and dialing number of a subscriber for inclusion in any directory of any form, or selling the contents of any directory database, or any portion or segment thereof, without first obtaining express consent of the subscriber. The rationale for this opt-in consent requirement, in addition to privacy considerations, is the fact that most, if not all, mobile telephony providers charge the subscriber for calls and text messages sent to the subscriber, unlike wireline carriers who only charge for outgoing calls. This bill would similarly prohibit non-telecommunications companies from publishing wireless subscriber lists without consent and should be supported for the same reasons.
- The California Public Utilities Commission (Commission) does not have any jurisdiction over the non-telecommunications service providers affected by this bill.

SUMMARY OF SUGGESTED AMENDMENTS:

- Staff recommends that the bill be amended to amend the California Penal Code or other more appropriate code section.

DIVISION ANALYSIS (Telecommunications Division):

- This legislation would enhance the privacy protections of California's wireless subscribers, which promotes the Commission's objectives. However it would be more effective if the bill amended the penal code to make it a crime, or if it provided a private right of action under the civil code.
- If the Legislature intends to require the Commission to enforce the law established by AB 2385, it would have an impact on our enforcement functions.
- Even if the Legislature expressly delegated authority to the Commission to enforce this statute, it would be difficult for the Commission to foresee if a company was going to publish a list of wireless subscribers without subscriber permission.
- Last year there were indications that the wireless industry had contracted with a separate entity to publish a white page directory of wireless subscriber numbers. U.S. Senator Barbara Boxer (CA) introduced legislation to prohibit publication of wireless subscriber numbers without the express consent of the subscriber (S.2454) and the industry backed off. Included in S. 2454 was a prohibition on any entity publishing a directory of wireless numbers without express consent of the subscribers. There has been no congressional action on the bill.
- S.2454 (Boxer, D-CA) which would provide, among other things:
 - "(2) PROHIBITION ON PUBLICATION OF DIRECTORIES- No person may publish, market for sale, or otherwise disseminate, any directory, index, or other list of the wireless telephone information of individuals unless each individual whose information appears in such directory, index, or list provides, in writing, to such person express prior authorization for the publication, marketing, or dissemination of such information."

PROGRAM BACKGROUND:

Unknown.

LEGISLATIVE HISTORY:

Unknown.

FISCAL IMPACT:

None.

STATUS:

AB 2385 is scheduled to be heard by the Assembly Utilities & Commerce on April 28, 2008.

SUPPORT/OPPOSITION:

None on file.

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Date: April 17, 2008.

BILL LANGUAGE:

BILL NUMBER: AB 2385 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Ruskin

FEBRUARY 21, 2008

An act to add Section 2891.3 to the Public Utilities Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

AB 2385, as introduced, Ruskin. Telecommunications: mobile telephony services: release of subscriber information.

Under existing law, the Federal Communications Commission licenses and partially regulates providers of commercial mobile radio service, including providers of cellular radiotelephone service, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR) services (collectively, mobile telephony service providers). Under existing law, no state or local government may regulate the entry of, or the rates charged by, any commercial mobile radio service, but is generally not prohibited from regulating the other terms and conditions of commercial mobile radio service.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law authorizes the commission to regulate telecommunications services and rates of telephone corporations, except to the extent regulation of commercial mobile radio service is preempted by federal regulation.

Existing law prohibits a provider of mobile telephony services, as defined, or any affiliate or agent of the provider, providing the name and dialing number of a subscriber for inclusion in a directory or directory database, from including the dialing number of any subscriber without first obtaining the express consent of that subscriber.

This bill would prohibit a specified entity that has aggregated or generated dialing number information of subscribers of mobile telephony services from releasing to the public the dialing number information for a subscriber without first obtaining the express consent of that subscriber.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2891.3 is added to the Public Utilities Code, to read:

2891.3. Notwithstanding Section 2891, an entity not subject to Section 2891.1 that has aggregated or generated dialing number

information, including, but not limited to, a calling list or database, of subscribers of mobile telephony services shall not release to the public the dialing number information for a subscriber without first obtaining the express consent of that subscriber. The express consent shall be subject to the requirements of subdivision (b) of Section 2891.1.