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Privacy Update:

Congress, FTC Weigh Privacy Safeguards

Congress and the administration turned their attention to a variety of privacy initiatives this summer.

In July, a House Ways and Means subcommittee cleared H.R. 4857, which would, among other things, make Social Security numbers subject to privacy restriction in the Fair Credit Reporting Act and restrict their use by government bodies.

Protections for Social Security numbers are viewed as having a better chance of passage than most of the privacy bills introduced this session, despite a Senate Banking Committee defeat in July of a narrower measure to prohibit financial services firms from buying or selling Social Security numbers.

Sen. Richard Shelby (R-AL), who sponsored the Social Security privacy amendment in the Senate Banking Committee and was the only Republican on the panel to vote for it, has said he will bring up the issue again on the Senate floor.

Meanwhile, the House Government Reform Committee in June approved legislation, H.R. 4049, to create a commission to study Internet privacy.

While crediting bill sponsor Asa Hutchinson (R-AR) for giving serious attention to the need for federal consumer privacy protections, CFA Legislative Director Travis Plunkett argued in April testimony that the legislation does not go far enough.

The basic principles for protecting individual privacy are well established, he said. Creating a commission to further study the issue could stall much needed legislative action.

"In the area of financial privacy, H.R. 4049 could actually prove harmful by stalling the development of a consensus that is now emerging at the state and federal level that stronger protections are necessary – soon," Plunkett said.

In May, the president called for new financial privacy legislation to allow consumers to block the sharing of their personal information among affiliated financial firms, to bar firms from selling customer information to outside companies, and to enable consumers to correct errors in their personal data files.

The proposal was introduced by House Democratic leaders as H.R. 4380, but it was not expected to progress this year.

Advocates Score Victory on Child Support Bill

On a separate legislative front, privacy advocates scored an important victory when the House Ways and Means Committee eliminated provisions from a child support bill that would have allowed serious invasions of privacy.

Without taking a position on the larger bill, CFA, Consumers Union, and U.S. Public Interest Research Group had expressed strong opposition to provisions that would have given "unregulated, and often predatory, private child support collection companies" access to a variety of state and federal databases containing information on individuals' wages and benefits, employers, addresses, and Social Security numbers.

"The combination of mistakes in these databases and the lack of regulation of these private users could have exposed innocent victims of mistaken identity to harassment and other abuses," Plunkett said.

As reported out of committee, however, the bill no longer allows private companies any access to such databases.

It also requires the GAO to conduct a study of the practices of these companies. Privacy advocates are working to get privacy practices and policies included in that study.

FTC Calls for Internet Privacy Legislation

The push for privacy legislation received a boost from the Federal Trade Commission in May, when FTC Chairman Robert Pitofsky announced that self-regulation was not adequate to ensure online privacy protection and that legislation was required.

This represented a major reversal for the agency, which had previously expressed a preference for industry voluntary standards.

"As survey after survey has shown, voluntary industry self-regulation does not protect consumer privacy," said CFA Consumer Protection Director Jean Ann Fox. "Consumers want a legal baseline of enforceable privacy protections."

The FTC proposed legislation that

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President Threatens To Veto Bankruptcy Bill

Citing the legislation's overly harsh treatment of financially strapped debtors, President Clinton announced in June that he will veto bankruptcy reform legislation unless Congress acts to restore balance to the bill.

"The majority of debtors turn to the bankruptcy system, not to escape bills they can afford to repay, but because they face real hardship – uninsured medical expenses, unemployment, or divorce," the president wrote in a June 29 letter to congressional leaders.

"We can target the abuses without placing unnecessary barriers before those in need of a fresh start who turn to bankruptcy as a last resort," he wrote.

Noting that he would "like to sign a balanced consumer bankruptcy bill that would encourage responsibility and reduce abuses of the bankruptcy system on the part of debtors and creditors alike," the president said he remains "concerned about the balance in the bill that the informal conferees have produced."

A national poll conducted by Opinion Research Corporation International and released by CFA in June indicates most Americans share that concern.

"Despite the claims of creditors, most Americans oppose provisions in the legislation that would erect more bankruptcy barriers for vulnerable families, continue to allow creditors to make risky loans to these families, and give wealthy debtors who go bankrupt the right to hang on to multimillion dollar homes," said CFA Legislative Director Travis Plunkett.

New Bankruptcy Barriers Opposed

For example, nearly six in ten Americans (59 percent) think it should be the same level of difficulty or easier for those with incomes below $25,000 to declare bankruptcy, according to the survey. Just 32 percent said it should be more difficult.

The bill, however, contains a number of provisions that would place new restrictions on these low- and moderate-income debtors.

It would make it much harder for families of all incomes to save such essential property as homes and cars in bankruptcy, and it would give creditors new rights, through threats of litigation or repossession, to collect debts that bankruptcy would currently eliminate.

It would also impose onerous and expensive new legal and paperwork burdens that would disadvantage cash-strapped families who are least able to afford them.

Nearly two-thirds of Americans, according to the survey, either strongly or moderately favor inclusion of a provision to discourage creditors from lending money to high-risk persons who already carry large debts. Only 31 percent strongly or moderately oppose such an approach.

"With high credit card debts a major cause of personal bankruptcies, one issue that has come up repeatedly during the debate in Congress is whether lenders should take more responsibility for the bankruptcy rate by cutting back on the extension of debt to risky customers," Plunkett said.

"Right now, however, neither the Senate nor the House bankruptcy bill would require credit card issuers to be more responsible in their lending practices," he said.

Finally, the vast majority of Americans (84 percent) oppose allowing wealthy individuals to retain expensive homes while filing for bankruptcy, including 67 percent who strongly oppose this practice.

Five states currently allow those declaring bankruptcy to retain homes of unlimited value.

As currently negotiated, the bill would cap at $100,000 the amount that debtors could shield from bankruptcy in their homes. However, it would allow wealthy individuals in the five states that currently have no caps to retain homes of unlimited value, as long as the debtor owned the property for two years before declaring bankruptcy.

Homestead Provision Favors Wealthy Debtors

When this deal was announced in early June, CFA Chairman Sen. Howard Metzenbaum (Ret.) wrote to members of Congress sharply criticizing this provision of the bill.

"This deal will allow sophisticated debtors to deliberately shield assets by buying homes in the states with no homestead cap," he said. "It will be easy for these debtors to hold off their creditors while they wait for the two-year ownership requirement to pass."

"This is just one more example of how this legislation favors rich debtors while hurting those of modest means," he said.

"No one opposes legislation to eliminate real abuses, but Congress appears intent on sending a bill to the president that will deny a financial fresh start to families who are responsibly using the bankruptcy system," Plunkett said.

Although congressional leaders announced their intention to press forward despite the presidential veto threat, the legislation was not expected to win enough support to overcome a veto.

"President Clinton is right to insist on balance, and the American people support that position," Plunkett said. "Congress should scrap this one-sided bill and go back to the drawing board," he said.

Most Public Playgrounds Pose Safety Hazards

A majority of public playgrounds surveyed across the country contain hard surfacing, equipment that is too high, openings in equipment that can entrap children, and swings that are too close together, according to a report released in June by CFA and U.S. Public Interest Research Group (U.S. PIRG).

The result is that children are at risk of serious injury and even death on public playgrounds, warned CFA General Counsel Mary Ellen Fise, co-author with U.S. PIRG Staff Attorney Rachel Weintraub of the report, *Playing It Safe*.

According to the Consumer Product Safety Commission, 170,100 children require hospital emergency room treatment and 17 children die each year as a result of injuries sustained on playground equipment.

"Caution is clearly the watchword for playground visits," Fise said. "We recommend that parents use our checklist to evaluate their local playground and report their findings to park or school officials."

"Playgrounds can be wonderful places for children to have fun and face new challenges," Weintraub added, "but far too many contain dangers that can injure and even kill."

Critical Hazards Analyzed

In their fifth survey of public playgrounds, the PIRGs and CFA surveyed 1,024 playgrounds in 27 states and the District of Columbia. As in previous surveys, they focused on hazards that cause the most serious playground injuries – falls, impact with moving swings, entanglement, and head entrapment.

For example, because 75 percent of injuries are caused by falls, protective surfacing under and around play equipment is a critical factor on playgrounds.

"Children are injured on playgrounds when they fall from equipment that is too high onto surfacing that is too hard," Weintraub said.

But researchers found surfacing that is too hard at eight out of ten playgrounds surveyed. Nearly half of all climbing equipment is too high – at over six feet.

In addition, CFA and PIRG found that 27 percent of swings nationally have swing spacing hazards, increasing the chance that a child will be hit by a moving swing.

They found that children are at risk of strangulation on more than a third of all playgrounds nationally because of gaps, protrusions, and other similar hazards on equipment that could cause head entrapment or clothing entanglement.

States Act To Improve Safety

On the positive side, six states – California, Connecticut, Michigan, New Jersey, North Carolina, and Texas – have taken legislative action to protect their children from playground hazards.

"We urge other states to follow this example and pass strong playground safety legislation," Fise said. She also urged CPSC "to strengthen its guidelines and work with local jurisdictions to identify and remove unsafe equipment."

To aid in that process, CFA has produced a Model Law on Public Play Equipment and Areas.

In addition to detailed safety and design provisions applicable to all play equipment and areas, the model law contains separate requirements for equipment for use by pre-school age children and that for use by school age children.

First published in 1992, the third edition of the model law contains a detailed cross-comparison with the CPSC voluntary guidelines for public play equipment.

In releasing the playground safety survey, CFA and U.S. PIRG encouraged state and local jurisdictions to adopt the model law requirements and to use them when purchasing new equipment or when refurbishing, remodeling, or maintaining existing playgrounds.

"CFA has prepared its model law as a blueprint for safe playgrounds," Fise said. "It goes beyond the voluntary guidelines in its requirements and gives legislators the child development rationale for critical safety measures."

The full *Playing It Safe* report is available on-line at www.pirg.org. To receive a print copy, send $30 prepaid to CFA, Playground Study, 1424 16th Street, N.W., Suite 604, Washington, D.C. 20036.

CFA also offers two free fact sheets – *Parent Checklist: How Safe Is Your Local Playground?* and *Home Play Equipment: Tips for Buying and Using* – to assist parents in evaluating their neighborhood playground and in selecting and using home play sets.

Both publications are available on the CFA web site at www.consumerfed.org or by sending a self-addressed, stamped envelope to Playground Checklist, P.O. Box 12099, Washington, D.C. 20005-0999.

President Signs Electronic Signatures Bill

The president signed electronic signatures legislation in June that, while far from perfect, includes some consumer protections.

The bill sets uniform federal standards for the signing of contracts, such as insurance policies and home mortgages, and purchasing of big-ticket items, such as cars, on-line. It also sets rules for the on-line and off-line delivery of important documents, such as contracts, warranties, and foreclosure notices.

The bill does not specify what type of digital signature must be used or, more importantly, what businesses must do to prevent the fraudulent use of a consumer's digital signature.

"This is more than an electronic signatures bill," said CFA Legislative Director Travis Plunkett. "It also allows crucial notices and warnings to be delivered on-line."

"The problem," he said, "is that electronic mail is not yet as reliable or as accessible for most consumers as postal mail. Attempts to guarantee that consumers will be able to receive and access important information related to a purchase met with mixed success in the bill."

In a victory for consumers, companies must get explicit permission from consumers before providing important documents and notices electronically, and they must verify that the consumer has the correct hardware and software to receive these disclosures.

Companies must also offer consumers the option of receiving this information on paper, free of charge, when the sale is made.

After the sale, consumers can choose to revert to paper disclosures at any time, although companies can charge a "reasonable" fee if the switch is unrelated to a change in hardware or software by the company.

The bill does not address some serious concerns raised about earlier versions of the legislation by consumer advocates and state attorneys general.

For example, the bill applies to in-person as well as on-line transactions, which could leave some consumers who do not have access to the Internet vulnerable to fraud.

It also does not require businesses to assure that consumers can receive and access many important disclosures after a sale is made, such as changes in terms of consumer credit agreements.

Finally, the bill preempts efforts by states to provide their residents with even modest additional on-line protections.

On the positive side, the bill does require certain critical notices, such as foreclosure and eviction notices, utility shut-off warnings, and court orders, to be delivered in writing.

And, while it allows for electronic storage of documents, it requires state and federal officials to develop new regulations to ensure that data is stored in a tamper-proof format.

"This bill will almost certainly lead to an increase in electronic commerce, which means that it is more important than ever for Congress to establish minimum online privacy standards," Plunkett said.

"Regulators will also have to keep an eye on the digital signatures technology that companies employ to ensure that it protects consumers from the fraudulent use of the electronic signature," he said.

Privacy *(Continued from Page 1)*

would require websites that collect personally identifiable information from or about consumers online to comply with the fair information practices by providing consumers with:

- notice of the company's privacy policy;
- the right to choose not to share their personally identifiable information;
- the ability to view information collected about them and correct any errors; and
- an assurance that their information will be kept secure.

An FTC survey of online privacy practices released in May found that only 20 percent of randomly sampled commercial websites complied with these practices. Even among the 100 most popular commercial websites, only 42 percent were in full compliance, according to the survey.

The White House, however, has been lukewarm to the FTC's legislative proposal, instead announcing in June its support for a technological fix that relies on software incorporated in web browsers to allow consumers to set their own levels of privacy protection.

"It will take good legislation to produce good technology, not the weak notice and choice approach supported by the White House," Fox said. "Why should consumers have to choose between participating in e-commerce and protecting their privacy?"

Voluntary Agreement Offers Inadequate Protections

While continuing to argue for a legislative fix, the FTC announced in July that it had reached an agreement with online advertising firms to adopt voluntary restrictions on their business practices.

Under the pact, which was widely criticized by privacy advocates, members of the Network Advertising Initiative agreed to provide prominent notice of information gathering and sharing practices, the ability to opt out, and access to information gathered about them.

"The agreement simply does not go far enough," Fox said. "On-line companies should not be permitted to snoop on their customers to generate personally identifiable profiles of on-line shopping activity."

Privacy advocates suffered another serious setback when federal regulators announced this spring that they expected to delay enforcement of new financial privacy rules required under the financial modernization law until July of 2001. The rules had been scheduled to take effect in November.

In a May letter to federal regulators, privacy advocates expressed adamant opposition to any such delay.

"The financial services industry has had ample notice and time to prepare for these new regulations," the groups wrote. They further noted that industry has used the existence of the proposed rules to argue against legislation mandating stronger protections.

"At a time when consumers are demanding more privacy protection, not less, it would be shocking if you endorsed this plan to delay giving consumers enforceable privacy rights," they concluded.

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Consumer Federation of America
1424 16th Street, N.W., Washington, D.C. 20036
(202) 387-6121 • www.consumerfed.org

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Investor Protection Update:

SEC Seeks Solutions To Market Fragmentation

Faced with growing evidence of fragmentation in the nation's securities markets, the Securities and Exchange Commission is considering a variety of possible approaches to combat the problem.

CFA filed comments with the agency in June outlining key principles that should govern policy in this area and offering suggestions for pro-investor reforms.

"The Commission has an opportunity to finally realize the vision of a national market system outlined by Congress a quarter of a century ago," wrote CFA Director of Investor Protection Barbara Roper.

"Investors and the markets stand to benefit from such a development. But development of a national market system will only come about if the Commission intervenes through regulatory action," she added.

Market fragmentation exists when certain pools of investor orders are isolated from the larger market. Investors are harmed both directly, when they fail to receive the best price for the securities they buy and sell, and indirectly, when overall market efficiency is reduced.

As a first step toward combatting market fragmentation, CFA wrote, the commission should radically reform the current system of inter-market linkages, which are hampered by archaic technology and an unworkable governance structure.

"The goal of such reform should be universal access by all qualified market participants to technologically up-to-date, highly efficient, equitably governed inter-market linkages," Roper said.

Second, as part of a larger review of brokers' duty to provide best execution, the commission should prohibit practices – such as payment for order flow and internalization – that contribute to fragmentation by inappropriately isolating order flow, she said.

CFA countered the argument, offered by some policymakers, that free market competition among market centers should be allowed to determine market structure.

"Market centers have historically avoided free market competition at all costs," Roper noted. "Instead, each market has sought to carve out its own niche, then operate as a virtual monopoly within that particular niche."

Furthermore, she said, because individual investors rarely direct where their orders are to be executed, markets do not compete directly for the orders of individual investors.

"They compete to attract order flow from brokers, and they do so in ways that may or may not benefit investors," Roper said. As a result, "competition alone cannot be relied upon to create market structures and promote practices that benefit investors," she said.

Because market-based self-regulatory organizations are likely to use their rule-making and enforcement authority to impede the development of competition, CFA argued that market reform should be accompanied by regulatory reform.

"If a true national market system is to develop, it will require independent oversight by a regulator with authority to set and enforce market-wide standards that benefit the overall market, rather than specific players," Roper said.

Such an approach would offer added benefits, "in the form of consistent rules and enforcement of those rules across markets, more independent regulation, and less duplication of regulatory effort," she said.

Proposed Reforms To Adviser Disclosure Praised

CFA also submitted comments to the SEC in June in praise of the commission's proposal to improve the quality of investment advisers' disclosure to clients and prospective clients.

"The Investment Advisers Act relies heavily on disclosure to arm clients with the information they need to protect their own interests," Roper said.

"Under the current system of disclosure, however, clients and potential clients of investment advisers receive incomplete, difficult to decipher information on which to base important decisions about whom to trust for financial advice," she said.

"Investors stand to benefit greatly from the improved access to more complete, understandable information about advisers and their advisory personnel that the proposed rule changes on disclosure would provide," she said.

Included as part of a proposal to create an electronic registration system for investment advisers, the disclosure rules would require key information to be conveyed in a plain English brochure.

The current form for investment adviser disclosure, "is not consumer-friendly in its layout, its language, or its presentation," Roper said.

"We believe investors would be more likely to read and understand a narrative brochure, particularly if it is truly written in simple language designed to clarify, rather than obfuscate, important issues," she said.

Other proposed rule changes singled out by CFA as being of particular benefit to investors are:

- a requirement that individual brochure supplements be provided for the firm personnel who are directly engaged in providing investment advice to clients;
- higher standards for reporting on conflicts of interest; and
- clarification that a broad range of disciplinary events must be disclosed.

"While we believe there are areas in which the SEC proposal could be improved, the proposed rule changes would go a long way toward addressing both the relevance and readability of the information provided to clients and potential clients of investment advisers," Roper said. "The benefits to investors would be enormous."

Brokers' Clients Will Be Denied Benefits

A major short-coming of the proposed rule changes is that not all "advisory" clients will receive the benefits, Roper noted, since the SEC appears determined to move forward with a rule proposal to expand broker-dealers' exclusion from the advisers act.

"Many full service brokers today have essentially transformed themselves into advisory firms, marketing investment advice as the primary service they have to offer to clients," Roper said.

Yet those same broker-dealers have been allowed to rely on an exclusion from the Investment Advisers Act based on the claim that any investment advice they offer is solely incidental to sales transactions.

In its comments on the disclosure rules, CFA once again urged the commission to require broker-dealers who market themselves as offering extensive advisory services to clients to comply with the Investment Advisers Act.

Absent such an action by the commission, "consumers who retain a full service broker, believing they are paying for investment advice, will be left out in the cold by this rule-making," Roper said.

Instead, however, the commission appears intent on moving forward with a rule proposal that would expand the broker-dealer exclusion from the advisers act.

In clear violation of the law, the rule would allow brokers who charge a fee for investment advice to escape regulation as advisers, as long as they limit themselves to providing advice on a non-discretionary basis and disclose that the account in question is a brokerage account.

"The rule proposal also states that any advice provided must be solely incidental to their brokerage activities, but, since the commission has never enforced the solely incidental requirement, that limitation appears to be meaningless," Roper said.

In May, CFA joined the Certified Financial Planner Board of Standards, the Investment Counsel Association of America, and the National Association of Personal Financial Advisors to submit supplemental comments to the commission, in light of its apparent determination to move forward with the rule proposal, outlining several steps necessary to minimize the rule's harm to investors.

Specifically, the groups argued that the commission must:

- clarify what constitutes "solely incidental" investment advice by a broker-dealer;
- treat all discretionary accounts as advisory accounts, regardless of the method of compensation; and
- preclude broker-dealers who rely on the exclusion from marketing their services as advisory services.

Commission action on the rule was expected by early fall.

Campaign Needed To Improve Nutrition

Delivering the closing address at the National Nutrition Summit, CFA's Carol Tucker Foreman called for creation of a national campaign to improve nutrition and combat obesity.

"When it comes to nutrition and physical activity, we live in a toxic environment," she said. "We're surrounded by compelling messages to eat more and seductive enticements to do less."

Speaking to an audience of nutrition and physical activity scientists, activists, public health practitioners, and food industry representatives, Tucker Foreman, Director of CFA's Food Policy Institute, called for a national campaign modeled on successful efforts to reduce smoking, to increase auto safety and encourage safety belt use, and to combat hunger.

"If the environment is hostile to public health, you have to change the environment. If social mores and public policies thwart healthy lifestyles, you have to alter social standards and change laws," she said.

Tucker Foreman was nominated by consumer nutrition groups to close the summit, which marked the 30th anniversary of the landmark 1969 White House Conference on Food, Nutrition, and Health.

That earlier conference led to major expansions in the food stamp and school lunch programs and creation of the Special Supplemental Nutrition Program for Women, Infants, and Children.

As with that earlier effort, a successful campaign to improve nutrition and combat obesity will rely on research to document the problem and media coverage to increase public awareness, she said. That, in turn, will help build support for appropriate policy responses, just as it did with the expansion of food assistance programs to combat hunger, she said.

Tucker Foreman acknowledged that changing dietary habits poses special challenges, since "we have to affect the lives of 270 million people who eat three times a day, every day for the rest of their lives."

The data already exists to demonstrate that "diet-related disease has risen to critical levels," she said.

The next step is to create a National Nutrition Policy – "a central guiding document that lays out the problem and a plan of action," she said.

"We have Dietary Guidelines and Healthy People, but we need one core statement that sets goals and timetables, lays out specific programs and actions, assigns responsibilities for achieving them, identifies sources of funding, and writes the first phases of the programs into the FY 2002 budget," she added.

In addition, advocates for change must organize and secure resources for a major communication program to promote public awareness, she said.

While all parties will have a role to play, Tucker Foreman noted that "much of the responsibility for progress will fall on" school boards and school administrators.

"If bad diets and physical activity are problems, and problems that are more easily avoided than cured, we must focus on children," she said.

She outlined a school-based agenda that includes making school breakfast and lunch programs a priority, making time for daily physical education, and offering good nutrition education.

"It is not good nutrition education, nor is it morally acceptable, to surround children with soda and snack machines in school buildings," she said. "It is not acceptable to allow fast food chains to buy their way into school cafeterias."

Tucker Foreman also called on government officials to think in new ways about how to achieve the goals in Healthy People 2010; on researchers to provide timely research instead of waiting for final answers that will never come; on activists and advocates to "keep prodding and poking," but without labeling "everyone in the food business [as] the ultimate enemy;" on industry to "think and act responsibly," particularly when it comes to advertising aimed at children; and on trade associations to promote "the interests of the best and most socially responsible" of their members.

"We have a need. We have the economic strength. All we need now is to make a commitment, to each other and to public health, and then muster the energy for action," Tucker Foreman concluded.

Decision Reinvigorates Open Access Campaign

In what initially appeared to be a setback for advocates of open access, the U.S. Court of Appeals for the Ninth Circuit ruled in June that the city of Portland could not use the cable franchise to require AT&T to provide open access to the broadband Internet.

In fact, however, because the decision declared broadband Internet facilities to be a telecommunications service, it opened up an important new avenue for ending the cable industry's discrimination against independent Internet Service Providers (ISPs).

"We view the Ninth Circuit ruling as a launch pad for redoubled efforts to obtain open access," said CFA Research Director Mark Cooper.

"In a sense, the court granted exactly what open access advocates were fighting for – the legal right of ISPs to nondiscriminatory interconnection with cable modem networks, which they can exercise through private action," he added.

Cooper warned, however, that "that right will be useless unless government enforces nondiscriminatory access in a meaningful fashion."

Unfortunately, he said, the Federal Communications Commission (FCC) is "already looking for ways to let AT&T off the hook."

FCC Position Inconsistent

He pointed to a June 30 statement by FCC Chairman William Kennard questioning whether high-speed Internet access over the cable plant is a telecommunications service and, if it is, whether it is subject to all of the common carrier regulations that apply to telephone companies.

"It is the height of inconsistency for the FCC to impose line sharing on high speed telephone connections, but impose no obligations whatsoever on high speed cable connections," Cooper said.

"And it is the height of hypocrisy for AT&T to demand open access to DSL service in Texas, but resist being subject to the same obligation on its two million cable lines in that state," he added.

Instead of setting out the principles and procedures for implementing open access, however, the FCC is proposing a proceeding to "establish a record on marketplace developments."

"In other words," Cooper said, "the Chairman is talking about taking several months to start a proceeding that focuses on the wrong issues."

"Nondiscriminatory access to the means of communications and the highways of commerce has been a pillar of democratic values and economic vitality in this country since its founding, not because marketplace incentives made it convenient for powerful economic interests, as the FCC hopes will happen, but because a representative government required it," he said.

"The fundamental telecommunications public policy issue at every level of government is to ensure that consumers and ISPs have access to cable modem service on non-discriminatory rates, terms, and conditions," he said.

To help bring that about, CFA released an action plan in July for ISPs and public interest groups to use in pressing local, state, and federal governments to require open access.

Open Access: Phase II Action Plan outlines a number of steps to take in the wake of the Ninth Circuit opinion:

- Local governments within the Ninth Circuit should now look for other grounds on which to exercise authority, including police powers and local oversight over telecommunications.
- Outside the Ninth Circuit, local governments should press for open access in every manner possible, including using their cable and telecommunications franchising authority.
- Local governments and state legislatures should adopt policies in support of open access and ask the state public utility commission to exercise jurisdiction and require open access.
- ISPs should immediately seek interconnection agreements and nondiscriminatory access from cable modem service providers and seek government action at the state and federal levels if nondiscriminatory access is denied.

"When this matter gets to the Supreme Court, it is our hope to have open access ordered under a number of legal theories and at several levels of government," Cooper said.

To that end, the Media Access Project filed a friend of the court brief in July in the U.S. Court of Appeals for the Fourth Circuit.

The brief was filed on behalf of CFA, the Virginia Citizens Consumer Council, and the Center for Media Education to address an incorrect District Court ruling that Henrico County, Virginia had no power to order open access as part of its cable franchise authority.

The brief argues that "the Communications Act of 1934 requires that broadband Internet services delivered on cable television systems must be provided on a nondiscriminatory basis, and that this conclusion does not depend on whether it is determined to be 'cable service' or 'telecommunications service.'"

Grassroots Activity Grows

Meanwhile, activity across the nation in support of open access has picked up since the Ninth Circuit ruling, Cooper said.

"Preserving freedom of speech and the open flow of commerce is the responsibility of every level of government and every citizen," he said. "That is why the increasing pace of activity at the grass roots level and in state and local governments is so encouraging."

"As commerce and communications converge into e-commerce, open access is more important than ever," Cooper said. "It is a fundamental obligation that cannot be left to the whims of a few giant corporations that could turn the information superhighway into a private toll road."

A variety of materials on open access, including the phase two action plan, are available for free on a special section of the CFA website at www.consumerfed.org/internetaccess. For a print copy, send $10 prepaid to CFA, Phase II Open Access Plan, 1424 16th Street, N.W., Suite 604, Washington, D.C. 20036.

President Urged To Release Oil Reserves

With crude oil prices at their highest level since the Persian Gulf War, the president announced in July that the administration would establish a special home heating oil reserve for the Northeast.

Using existing legal authority, the Energy Department will exchange oil from the Strategic Petroleum Reserve to create a heating oil reserve for the Northeast, where most heating oil is consumed.

CFA Chairman Sen. Howard Metzenbaum (Ret.) praised the move, but also reiterated his earlier call for the president and Congress to halt rising gasoline prices by releasing oil from the Strategic Petroleum Reserve. "The president is wise to create a new reserve for home heating oil, so that residents of the Northeast aren't hit by prices of more than two dollars a gallon for a second winter in a row," Sen. Metzenbaum said.

"But what good is an oil reserve if it is not used to bring down oil prices that are hurting vulnerable consumers and damaging the economy?" he added. "If oil were released right now from the nation's Strategic Petroleum Reserve, it would provide immediate relief to beleaguered consumers by stabilizing and then lowering gasoline prices."

By June, crude oil prices had nearly tripled since December of 1998, from less than $11 a barrel to around $30. The problem results from oil refiners' failure to build sufficient gasoline and other petroleum product inventories, Sen. Metzenbaum said.

At the end of May of this year, he noted, total gasoline inventories were hovering just above 200 million barrels, compared with inventories of close to 225 million barrels at the end of May last year. In contrast, the U.S. strategic petroleum reserve, at 573 million barrels of crude oil, is approaching an all-time high.

"A decision by the President to order a two million barrel a day sale for at least 30 days could send a very strong signal to the oil market," Sen. Metzenbaum said. "Without such an announcement, consumers will remain at the mercy of OPEC and the major oil companies."

Instead, the administration's legal authority to use the reserve has expired. The House has passed legislation reauthorizing the use of the reserve, and the Senate Energy and Natural Resources Committee had reportedly reached an agreement on the issue in late July. However, that measure was not brought to the full Senate for a vote before the August recess. Sen. Metzenbaum called on the Senate to follow the House lead and pass reauthorization legislation.

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Consumer Federation of America
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