

# Grid Privacy Issues To Be Examined by the Federal Communications Commission - Comment Period through October 2, 2009

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By [Cynthia J. Larose](#)

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Smart Grid technology enables electric utilities to use communications and computing technology to glean consumer electric usage patterns to facilitate more efficient network management. It has been identified by the FCC as a promising way to use broadband to promote energy efficiency, reduce greenhouse gas emissions, and encourage energy independence.

While it is true that the intention of “smart grid” technology is to improve network management and efficiencies, consumer electric usage patterns could conceivably do far more. For example, marketing firms may find valuable market penetration data in consumer electric usage patterns, and law enforcement could use information about electricity usage to pinpoint potential sites of criminal activity. Basically, the very characteristics that make smart grid information valuable to environmental efforts may also have serious implications for consumer privacy, and are attracting the interest of regulators here in the U.S. and elsewhere. See, for example, [Canadian Privacy Commissioner: Beware the Smart Grid | Green Business | Reuters](#).

Specifically, the FCC [is seeking comment](#) (GN Docket Nos. 09–47, 09–51, 09–137) by **October 2, 2009** on the issue of how strong privacy and security requirements can be satisfied in deploying smart grid technology without stifling innovation. The public notice seeking comment lists specific areas in which the FCC is soliciting comment; in the privacy arena, the FCC is looking to understand such issues as how “demand response” deployments will use real–time data, and access to that data. Questions include:

- In current Smart Meter<sup>1</sup> deployments, what percentage of customers have access to real–time consumption and/or pricing data? How is this access provided?
- How should third–party application developers and device makers use this data? How can strong privacy and security requirements be satisfied without stifling innovation?
- What are the implications of opening real–time consumption data to consumers and the energy management devices and applications they choose to connect?
- Which types of devices (*e.g.*, appliances, thermostats, and energy displays, etc.) will be connected to Smart Meters? What types of networking technologies will be used? What type of data will be shared between Smart Meters and devices?
- Which types of devices (*e.g.*, appliances, thermostats, and energy displays, etc.) will be connected to the Internet? What types of networking technologies will be used? What type of data will be shared between these devices and the Internet?

The Colorado Public Utilities Commission (CPUC) [just closed a comment period](#) last week on the following issues and the comments received on these questions may help to further inform the debate at the national level:

1. What concerns surrounding the collection and analysis of detailed electricity usage information should the CPUC consider as it establishes policies governing access to and use of this information?
2. What, if any, are the trade-offs between protecting privacy and promoting innovation with regards to smart grid technology?
3. Should detailed electricity usage information be protected? If so, how?
4. How do constitutional or statutory protections impact the use of consumers' detailed electricity usage information collected as part of smart grid initiatives? What protections should be put in place even if they are not covered by constitutional or statutory provisions?
5. What are the necessary components of effective privacy regulation of consumer electricity usage patterns? For example, should disclosure of consumer information to third-parties be on an opt-in or an opt-out basis, or should the consent requirement depend on the nature of the party receiving the information?
6. How much information about consumer electricity usage do electric utilities and "edge service providers" require to facilitate more efficient network management, load forecasting, asset management, bill control, demand-side load management, efficiency consulting, energy savings contracting, etc.?
7. How do privacy regulations affect electric utilities and "edge service providers" in their efforts to provide enhanced electricity management services?
8. Who "owns" customer information?
9. What should be a utility's obligation to "unbundle" metering in homes and businesses?

If you are interested in participating in the FCC's proceeding by filing written comments and would like assistance, please contact a member of your Mintz Levin service team.

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## Endnotes

<sup>1</sup> A "Smart Meter" is generally known as an advanced meter (usually an electrical meter) that identifies consumption in more detail than a conventional meter, and optionally, but generally, communicates that information via some network back to the local utility for monitoring and billing purposes.

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*If you have any questions about the new regulations or the regulatory process, please call your Mintz Levin service professional or any of those listed below.*

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