



June 13, 2016

The Honorable Greg Walden
Chairman, Subcommittee on Communications and Technology
House Committee on Energy and Commerce
2185 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Member, Subcommittee on Communications and Technology
House Committee on Energy and Commerce
241 Cannon House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

We write to commend the Subcommittee for holding its hearing to examine the FCC's proposed broadband privacy rules. Given the substantial interest in the proceeding and the significant concerns that have been raised about the proposed rules' impact on consumers, competition, and innovation, the hearing is timely and important.

A unified privacy framework applicable to all entities collecting and using consumer data, based on the FTC's longstanding and successful approach, has been essential to the growth of the Internet economy and the multitude of affordable and cutting edge online services available to consumers today. Accordingly, we believe the FCC's primary objective in adopting privacy rules for Internet Service Providers (ISPs) should be to ensure consistency with the FTC's existing framework. The need for a consistent regulatory approach was stressed in numerous comments filed in response to the FCC's broadband privacy Notice of Proposed Rulemaking (NPRM). Many commenters also discussed the negative consequences for consumers, competition, innovation, and broadband

investment that will result if such burdensome and prescriptive regulations are imposed on only one segment of the Internet.

In no way does the FCC's decision to reclassify broadband as a Title II service require a departure from the FTC's successful approach to privacy based on effective notice to consumers and a meaningful choice as to how their data is used. Comments from the staff of the FTC's Bureau of Consumer Protection pointed out that the FCC's proposed rules that are only applicable to ISPs "is not optimal." More specifically, the FTC's staff called into question the FCC's proposed rules that are based on the type of entity with access to data, rather than the sensitivity of particular information which "could hamper beneficial uses of data that consumers may prefer, while failing to protect against practices that are more likely to be unwanted and potentially harmful." These sentiments were reflected in numerous comments from current and former FTC Commissioners, civil rights organizations, the advertising industry, health and home efficiency companies, economists, academics, constitutional scholars, and technology organizations who called on the FCC to develop a common, harmonized approach to online privacy that limits the imposition of an opt-in consent requirement to the use and disclosure of sensitive data such as social security numbers, health and financial data, children's information, and precise geolocation information. Recent survey research provided to the FCC shows that consumers agree, with 83% of respondents indicating that privacy protections should be based on the sensitivity of data, *not* on who collects it.

We agree as well. In March, a broad industry coalition composed of ISPs, tech companies, equipment providers, and many others urged the FCC to adopt a flexible, principles-based privacy regime based on the FTC's notice-and-choice framework that remains applicable to the rest of the Internet ecosystem. The privacy proposal, attached to this letter, includes central elements of the FTC framework – transparency, respect for context, and choice –to protect consumers. The principles give consumers the ability to choose how their data is used and protects their personal information by prohibiting unfair or deceptive acts or practices. Unlike the FCC's proposal, however, the flexibility the principles permit would allow consumers to experience the substantial benefits that result from companies having the ability to responsibly use data in ways that foster competition, innovation, and the continued emergence of new services and applications.

Adoption of the principles-based approach would be consistent with the White House's longstanding call for a uniform privacy framework. It would also be consistent with the suggestions of the many parties who have already weighed in with the FCC and made clear that the FCC should abandon its flawed approach and harmonize privacy regulation with the well-established and effective approach implemented by the FTC and consistently endorsed by the Obama Administration. Finally, it would ensure consistency internationally as discussions continue around the "Privacy Shield" to facilitate cross-border data sharing and avoid what one Member of the European Parliament recently called a "glaring double standard" that "would certainly raise eyebrows from a European perspective."

We appreciate the Subcommittee's important recognition of this issue and the need for Congressional oversight. We are hopeful that your examination of these issues will highlight the need for an FCC approach that is consistent with the Administration's call for a uniform privacy framework and that closely harmonizes FCC privacy rules with the existing FTC framework. Doing so would protect consumer privacy, minimize consumer confusion resulting from inconsistent regulations, and provide the flexibility the online marketplace needs in order to continue to innovate and evolve as it has done for many years under such a regime.

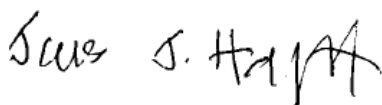
Sincerely,



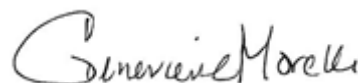
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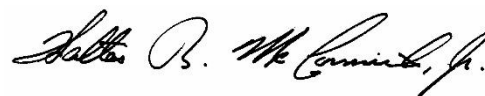
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