



SENATE 147 IS UNNECESSARY AND WOULD DISADVANTAGE VERMONT INTERNET SERVICE PROVIDERS

I. Introduction. The New England Cable & Telecommunications Association (NECTA) is a five state regional trade association representing substantially all private cable telecommunications companies in Vermont, Connecticut, Massachusetts, New Hampshire and Rhode Island. For more than four decades, NECTA has represented the interest of the cable telecommunications industry before state and federal regulatory agencies, in the Courts, the Legislatures and before the Congress of the United States.

II. Repeal of the FCC's Broadband Privacy Rules Does Not Leave Consumers Unprotected. Repeal of the Federal Communications Commission's (FCC) broadband privacy rules does not harm consumers or change the status quo because the rules never went into effect. Indeed, nothing for consumers has changed because repeal leaves in place the existing legal framework that has been in place for over two years since the FCC adopted the *Open Internet Order* and reclassified broadband Internet access service as a telecommunications service.

By contrast, hastily drafted state laws to regulate privacy practices of ISPs could prevent the offering of broadband service, would confuse consumers, mandate highly disruptive and burdensome consent requirements for Internet users and even create significant hurdles to use of the Internet. The FCC took almost a year to come up with its rules. Hastily assembled, inconsistent state privacy laws on this complicated and highly technical issue would have far-reaching unintended consequences that could disrupt the operation of the Internet. These laws extend far beyond the FTC's successful privacy framework in ways that create significant operational challenges and would require repeated affirmative user consent for numerous routine uses that have nothing to do with "selling customer data." They would frustrate, rather than help, consumers.

III. Internet Service Providers (ISPs) Continue to Be Required to Safeguard Their Customers' Privacy. The FCC's reclassification of broadband as a common carrier offering removed FTC's established privacy jurisdiction over ISPs. In order to ensure that consumers' data and privacy would be protected, the FCC issued an enforcement advisory outlining that the Communications Act (Section 222) continues to apply to ISPs, who should "employ effective privacy protections in line with their privacy policies and core tenets of basic privacy protections." This guidance, which continues to apply today, ensures continued oversight of ISP privacy practices under the Communications Act even in the absence of specific rules.

IV. Federal Cop on the Beat. Following enactment of a congressional resolution of disapproval of the FCC's broadband privacy regulations, the FCC Chairman said: "In order to deliver that consistent and comprehensive protection, the Federal Communications Commission will be working with the Federal Trade Commission to restore the FTC's authority to police Internet service providers' privacy practices. We need to put America's most experienced and

expert privacy cop back on the beat. And we need to end the uncertainty and confusion that was created in 2015 when the FCC intruded in this space.”

Meanwhile, the FCC retains authority to protect consumers and oversee and bring enforcement actions with regard to ISP privacy practices.

V. ISPs have made strong commitments to privacy and their privacy policies offer consumers choice as to how their data is used. ISPs’ broadband privacy policies reflect the key principles of transparency, choice, and security that undergird the FTC’s successful privacy framework. ISPs have also reiterated that they do not sell their customers’ personal web browsing history. Their customers are able to make appropriate choices with regard to the use of their data. The attached “ISP Privacy Principles” (Attachment A), which ISPs have publicly committed to follow, track in full the FTC’s privacy framework.

VI. ISPs Will Continue to Be Subject to a Variety of Federal and State Privacy, Data Security, and Data Breach Laws that Protect Consumers. New State Laws are Not Necessary. ISPs also continue to be subject to a wide range of federal and state privacy and data security laws that protect consumers’ data. These include the Children’s Online Privacy Protection Act, the Electronic Communications Privacy Act, the CAN-SPAM Act, state data breach notification laws in virtually every state in the country, state-based privacy statutes, and common law legal doctrines protecting privacy and data security. The additional state requirements being proposed in Vermont are not necessary, would annoy consumers by requiring affirmative consent for routine Internet functions, and would confuse consumers who should have the ability to rely on clear, uniform privacy protections across the Internet.

VII. Consumers Benefit By Keeping A Single, Uniform Set of Privacy Obligations Governing Broadband Data, Based on the FTC’s Time-Tested Framework. The repeal of the FCC rules begins a process that could restore the application of a single and consistent set of privacy obligations for broadband consumer data, tailored to the sensitivity of the data in question and how it is actually used, and applicable across the Internet. Privacy enforcement under state and federal consumer protection statutes has been successful and well-tested, and there is no justification for departing from that successful approach in this particular case.

VIII. Repeal of the FCC Privacy Rules Promotes a Well-Tested Regulatory Approach; new Vermont Laws Would Add Confusion from the FCC Rules and Have Unintended Consequences. By discarding the effective framework for privacy requirements that has been in place for over a decade, the FCC approach would have generated considerable consumer confusion. If Vermont legislation takes an approach similar to the former FCC approach, consumers would be presented with frustrating requests for consent to use the Internet for routine purposes. Consumers benefit from being protected by a predictable, consistent regulatory framework that has a history of successfully governing how their online data is handled.

For all the above reasons we respectfully oppose S.147.

Respectfully submitted,



Paul R. Cianelli, President

Dated: April 10, 2017

Attachment A

January 27, 2017
For Immediate Release

Protecting Consumer Privacy Online *Internet Companies Reaffirm Consumer Privacy Principles* *As FCC Reviews Flawed Wheeler Era Broadband Rules*

Today, associations representing virtually all of the leading US internet service providers filed a petition asking the FCC to stay unnecessarily restrictive and destructive broadband privacy rules recently adopted by the FCC, while at the same time releasing detailed and comprehensive principles reiterating ISPs' commitment to protecting their customers' privacy online.

These principles include specific policies on transparency, choice, security, and notifications in the case of a data breach. They reaffirm and restate the ISPs' longstanding, pro-consumer privacy practices based on the highly respected FTC framework that has protected internet users for years and provided the flexibility necessary to innovate new product solutions to enhance consumers' online experiences.

These effective principles reflect consumer expectation in stark contrast to the flawed Wheeler privacy rules, which would create an inconsistent and confusing patchwork that will confuse consumers and weaken data protection online. Data submitted to the FCC shows that 94% of internet users believe all companies collecting or using information online should be governed by the same set of rules.

The stay filed by CTIA, NCTA – The Internet & Television Association, USTelecom, ACA, CTA, CCA, ITTA, NTCA – The Rural Broadband Association, WISPA, and WTA asks the FCC to halt these harmful rules while it resolves multiple pending motions for their reconsideration. If granted, the combination of the ISPs' privacy principles and applicable laws would protect consumers' privacy without subjecting them to flawed and confusing regulations that would undermine the safe and consistent treatment of their data online.

For over twenty years, ISPs have protected their consumers' data with the strongest pro-consumer policies in the internet ecosystem. ISPs know the success of any digital business depends on earning their customers' trust on privacy. The following companies and associations affirm these principles: Altice USA, American Cable Association, AT&T, Charter Communications, Citizens Telephone and Cablevision, Comcast, Cox Communications, CTIA, Dickey Rural Networks, Inland Telephone Company d/b/a Inland Networks, ITTA – The Voice of Mid-Sized Communications Companies, NCTA – the Internet & Television Association, Northeast Louisiana Telephone Co., Inc. (NortheastTel), NTCA – The Rural Broadband Association, SCTelcom, T-Mobile, USTelecom, Verizon, VTX1 Companies, Wheat State Telephone, Inc., Wireless Internet Service Providers Association, WTA – Advocates for Rural Broadband.

The following statements can be attributed to each Association accordingly:

Tom Power, Senior Vice President and General Counsel, CTIA: "Wireless carriers are committed to respecting consumer privacy, and today they have enshrined that commitment by embracing a set of core privacy principles. We support a regulatory regime that reflects these principles and provides a uniform privacy and data security framework for all. Unfortunately, the FCC has adopted an uneven regulatory regime that picks winners and losers and that will confuse consumers who quite reasonably

expect all companies to be governed by the same set of rules. Investment in next-generation 5G services require more regulatory clarity on broadband privacy, not less - a grant of this petition would be an important initial step in the right direction and allow time for careful review by both Congress and the FCC.”

Genevieve Morelli, President, ITTA: “ITTA’s member companies remain fully committed to safeguarding consumer privacy. Today’s petition asks the FCC to halt implementation of rules that, while well-intentioned, exceed the FCC’s statutory authority and will only serve to confuse consumers, in turn undermining their ability to exercise choice. We are confident that when the FCC reexamines these rules, it will address their unequal treatment of ISPs and will apply the same standards to all entities in the Internet ecosystem, thereby benefitting all consumers.”

Rick Chessen, Senior Vice President of Law & Regulatory Policy, NCTA: “Cable ISPs know well the trust that consumers place in them to protect their personal information. For years, they have met or exceeded the standards for privacy that were established by the Federal Trade Commission and were applicable throughout the Internet ecosystem. While these pro-privacy practices will continue, we look forward to swift action by the new FCC to reverse its recent decision that imposes new regulatory costs uniquely on ISPs and denies consumers the benefit of a consistent and effective approach to privacy protection.”

Jon Banks, Senior Vice President of Law & Policy, USTelecom: “USTelecom’s broadband provider members understand that consumer privacy is a core value. Our filing today simply asks the FCC to return to the FTC’s time-tested privacy framework that provides transparency, consumer choice and data security assurances. For many years, that framework has successfully protected consumer privacy and nurtured the growth of innovative services. We hope the FCC acts quickly so that consumers have a single framework for privacy and innovation across the Internet.”

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ISP Privacy Principles

ISPs understand the trust our customers place in us, and we are committed to protecting our customers' privacy and safeguarding their information. For 20 years, we have implemented policies and practices that are consistent with the FTC's widely respected and effective privacy framework and other federal and state privacy laws. This framework helped drive the success of today's Internet ecosystem by balancing consumer protection with the flexibility necessary to innovate. We understand the importance of maintaining our customers' trust. That is why we will continue to provide consumer privacy protections, while at the same time meeting consumers' expectations for innovative new product solutions to enhance their online experiences. Regardless of the legal status of the FCC's broadband privacy rules, we remain committed to protecting our customers' privacy and safeguarding their information because we value their trust. As policymakers evaluate the issues, we will maintain consumer protections that include the following:

- **Transparency.** ISPs will continue to provide their broadband customers with a clear, comprehensible, accurate, and continuously available privacy notice that describes the customer information we collect, how we will use that information, and when we will share that information with third parties.
- **Consumer Choice.** ISPs will continue to give broadband customers easy-to-understand privacy choices based on the sensitivity of their personal data and how it will be used or disclosed, consistent with the FTC's privacy framework. In particular, ISPs will continue to: (i) follow the FTC's guidance regarding opt-in consent for the use and sharing of sensitive information as defined by the FTC; (ii) offer an opt-out choice to use non-sensitive customer information for personalized third-party marketing; and (iii) rely on implied consent to use customer information in activities like service fulfillment and support, fraud prevention, market research, product development, network management and security, compliance with law, and first-party marketing. This is the same flexible choice approach used across the Internet ecosystem and is very familiar to consumers.
- **Data Security.** ISPs will continue to take reasonable measures to protect customer information we collect from unauthorized use, disclosure, or access. Consistent with the FTC's framework, precedent, and guidance, these measures will take into account the nature and scope of the ISP's activities, the sensitivity of the data, the size of the ISP, and technical feasibility.
- **Data Breach Notifications.** ISPs will continue to notify consumers of data breaches as appropriate, including complying with all applicable state data breach laws, which contain robust requirements to notify affected customers, regulators, law enforcement, and others, without unreasonable delay, when an unauthorized person acquires the customers' sensitive personal information as defined in these laws.

These principles are consistent with the FTC's privacy framework, which has proved to be a successful privacy regime for many years and which continues to apply to non-ISPs, including social media

networks, operating systems, search engines, browsers, and other edge providers that collect and use the same online data as ISPs. That framework has protected consumers' privacy while fostering unprecedented investment and innovation. The principles are also consistent with the FCC's May 2015 Enforcement Advisory, which applied to ISPs for almost two years while the FCC's broadband privacy rules were being considered.

The above principles, as well as ISPs' continued compliance with various federal and state privacy laws, will protect consumers' privacy, while also encouraging continued investment, innovation, and competition in the Internet ecosystem.

Altice USA
American Cable Association
AT&T
Charter Communications
Citizens Telephone and Cablevision
Comcast
Cox Communications
CTIA
Dickey Rural Networks
Inland Telephone Company d/b/a Inland Networks
ITTA – The Voice of Mid-Sized Communications Companies
NCTA – The Internet & Television Association
Northeast Louisiana Telephone Co., Inc. (NortheastTel)
NTCA – The Rural Broadband Association
SCTelcom
T-Mobile
USTelecom
Verizon
VTX1 Companies
Wheat State Telephone, Inc.
Wireless Internet Service Providers Association
WTA – Advocates for Rural Broadband