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October 9, 2015

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, Southwest
Washington, D.C. 20554

Dear Chairman Wheeler:

We write to address reports that the Federal Communications Commission (FCC) intends to enforce consumer privacy protections against Internet Service Providers (ISPs) pursuant to Section 222 of the Communications Act. On May 15th, the FCC issued an Enforcement Advisory that broadband providers should take “reasonable” and “good faith” steps to protect consumer privacy. The Commission claims this authority as an outgrowth of its Net Neutrality rules reclassifying broadband Internet access service as a telecommunications service pursuant to Title II of the Communications Act. The FCC’s potential entry as a privacy regulator is troubling for several reasons.

First, the Federal Trade Commission (FTC) has traditionally been our government’s sole Internet privacy regulator. Having dual entities regulate online privacy will create confusion as pieces of the Internet eco-system would potentially be subject to different rules. This will not facilitate the continued development of an Internet that you have referred to as the “most powerful and pervasive network in the history of the planet.” Moreover, your comment implies that FTC regulation thus far has been successful and ought to continue, which ultimately undermines the rationale for added FCC regulation.

Second, the FCC’s perceived grant of authority to enforce consumer privacy pursuant to Section 222 was done unilaterally. We routinely voiced concerns about Title II reclassification and the sweeping regulatory powers the Commission would have at its disposal throughout the Net Neutrality rulemaking process. The Commission’s jurisdictional appetite is troubling. Therefore, continued unilateral action which siphons jurisdiction from other government regulators will face increased Congressional scrutiny.

Third, the FCC does not have the requisite technical expertise to regulate privacy. FTC Commissioner Joshua Wright testified before the House Judiciary Committee on March 25th that the FTC has “unique expertise” in “enforcing broadband service providers’ obligations to protect the privacy and security of consumer data.” Commissioner Wright added that the FCC’s entry as a privacy regulator “will create further obstacles to protecting consumers and fostering competition by depriving the FTC of its long-standing jurisdiction in this area...”, which it has “engaged in over the last two decades.” We share Commissioner Wright’s concern. The FCC’s actions will likely have the unintended consequence of providing consumer data with less protection.

The FCC granted itself powerful regulatory authority by reclassifying the Internet as a telecommunications service. Accordingly, it must resist the temptation to operate beyond the scope of its expertise simply because it can. A dual privacy enforcement model will do less to protect consumer data, lead to industry confusion within the Internet eco-system, and confirm fears that Title II reclassification was an unnecessary power grab. Thank you for your consideration of our views on these matters.

Sincerely,


Marsha Blackburn
Member of Congress


Greg Walden
Member of Congress


Joe Barton
Member of Congress


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Member of Congress


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