

United States Senate

WASHINGTON, DC 20510

July 22, 2015

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Wheeler:

The availability of Internet access and proliferation of connected devices has led to opportunity and economic growth unparalleled in American history. Yet, this explosion of technology comes with new concerns about the privacy of Americans, and while technology may change, consumers' rights do not. The Federal Communications Commission (FCC) should work to animate new forms of technology, including broadband Internet access service, with time-tested American values, including the right to privacy.

The FCC has nearly thirty years of experience protecting the privacy of telecommunications customers who have no choice but to share highly personal information about themselves in order to obtain essential communications services. Against the backdrop of the privacy framework that the FCC developed in the 1980s, Congress passed the bipartisan Telecommunications Act of 1996 and granted the FCC expansive authority to adopt enforceable rules that require common carriers to protect the proprietary information of customers.

Current rules ensure that consumers' personal information cannot be sold to the highest bidder without consumer consent. These rules honor Americans' expectation of privacy in personal communications and foster trust in essential networks that promote unhindered speech and association. The rules also help prevent companies with few competitors from abusing the personal information of consumers to gain an anticompetitive advantage in other markets. We support these strong rules.

We also support extending these rules to broadband. In 2015, broadband access is no longer a luxury; it is now as essential as phone service. Like the phone companies of the twentieth century, Internet service providers (ISPs) are gatekeepers that control the infrastructure that Americans depend on to access vital applications and services. ISPs provide a critical service that allows consumers to access information and communicate across town and around the globe. An ISP has a duty to protect the privacy of consumers who use the company's wired and wireless infrastructure to connect to the world.

We are pleased with recent steps that the FCC has taken to increase consumers' privacy protections. In February 2015, the FCC reclassified broadband as a telecommunications service under Title II of the Communications Act and adopted rules to protect the open Internet. As part

of this reclassification, the Commission wisely chose to apply Section 222 of Title II to broadband, extending the duty to protect the privacy of information that ISPs collect about their customers because of the carrier-customer relationship.

We strongly support the Commission's decision to strengthen privacy protections for consumers' personal information, and we applaud your recent announcement about initiating a rulemaking to protect the privacy of consumers who use broadband. As the FCC moves forward and works to apply privacy protections to broadband, we urge you to carefully undertake a rulemaking that considers the following:

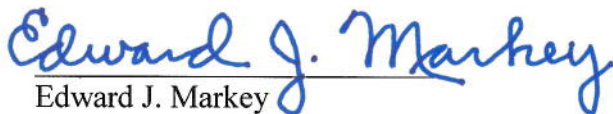
1. **The definition of Customer Proprietary Network Information (CPNI).** We call on the Commission to adopt a comprehensive definition of CPNI as it pertains to broadband. Every click consumers make online paints a detailed picture of their personal and professional lives. Accordingly, ISPs should be prohibited from sharing this information without user consent. Data pertaining to Internet usage, online activity and broadband service payments should be included in the FCC's definition of CPNI.
2. **Transparency** around data collection. Consumers ought to be able to know at any time what kind of information an ISP is collecting about them and how this information is being used. ISPs should accurately outline data collection policies in standardized model forms – adopted by the Commission with prior input by stakeholders – that are easy for consumers to access, read and understand.
3. **Consumer consent** before ISPs use and share the proprietary information of consumers. Generally, consumer information ought not be shared beyond the extent necessary for the ISP to deliver the requested service to the consumer.
 - ISPs should gain affirmative express consent from consumers before using or sharing information beyond what a consumer would reasonably expect an ISP to use and share in order to deliver service and manage its networks. This includes sharing information with affiliates, as well as for advertising or marketing purposes.
 - The use of a service should not be conditioned upon consumer consent for the collection, use or sharing of information beyond that which is necessary to deliver service. For example, a consumer should not be required to click through a form that requires the consumer to forfeit privacy protections as a condition to gaining access to a service.
 - Privacy protections ought to be considered a fundamental, built-in component of broadband service. Consumers should not have to pay an ISP an additional amount in order to protect their privacy.
4. **Data security and timely notification of breaches.** Consumers' information must be protected from external and internal unauthorized access with strong data security

measures. If a network or database is breached in a manner that could compromise the consumer's privacy or cause the consumer harm, ISPs must notify consumers about the breach and any actions that consumers could take to mitigate potential harm from the breach.

5. **Clear complaint processes.** Both ISPs and the FCC should have clear, user-friendly, easily accessible and responsive complaint processes for consumers who have evidence or reason to believe their privacy has been violated.

Thank you for your attention to this important matter.

Sincerely,


Edward J. Markey
United States Senator



Richard Blumenthal
United States Senator

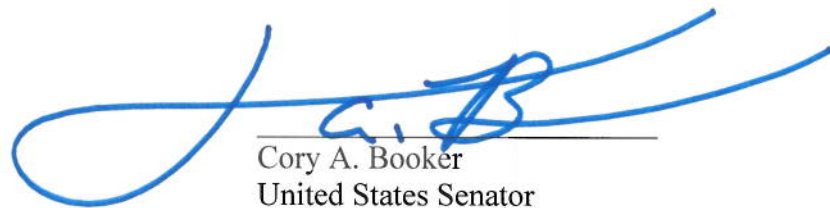

Al Franken
United States Senator

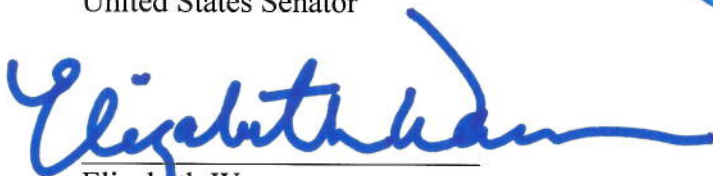

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