

January 27, 2017

The Honorable Paul Ryan  
Speaker  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Mitch McConnell  
Majority Leader  
U.S. Senate  
Washington, DC 20510

The Honorable Nancy Pelosi  
Democratic Leader  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Chuck Schumer  
Democratic Leader  
U.S. Senate  
Washington, DC 20510

Dear Speaker Ryan, Majority Leader McConnell, Leader Pelosi and Leader Schumer:

Consumers have embraced the dynamism of today's internet, and have come to expect a seamless and consistent online experience for the apps on which they rely, the Web-based sites and services they use, and the devices that deliver those offerings which make our lives easier and more efficient. The internet ecosystem facilitates online products and services that are valued by consumers, foster innovation in virtually every industry, and contribute substantially to U.S. economic growth.

Unfortunately, in adopting new broadband privacy rules late last year, the Federal Communications Commission ("FCC") took action<sup>1</sup> that jeopardizes the vibrancy and success of the internet and the innovations the internet has and should continue to offer. While the FCC's Order applies only to Internet Service Providers ("ISPs"), the onerous and unnecessary rules it adopted establish a very harmful precedent for the entire internet ecosystem. We therefore urge Congress to enact a resolution of disapproval pursuant to the Congressional Review Act ("CRA")<sup>2</sup> vitiating the Order.

Adopted on a party-line 3-2 vote just ten days before the Presidential election, over strenuous objections by the minority and strong concerns expressed by entities throughout the internet ecosystem, the new rules impose overly prescriptive online privacy and data security requirements that will conflict with established law, policy, and practice and cause consumer confusion. The FCC's Order deviates substantially from the Federal Trade Commission's ("FTC") highly effective privacy regime that has protected consumers from harmful data collection practices while permitting the flexibility necessary to allow the internet to flourish. The FCC twice failed to justify a departure from this well-established regime, under which all companies operated and all consumers were well-served for years.

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<sup>1</sup> Report & Order, *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Dkt. No. 16-106, FCC No. 16-148 (Nov. 2, 2016) ("*Order*").

<sup>2</sup> 5 U.S.C. § 801, et. seq.

As representatives of companies that compete in the dynamic and data-driven internet ecosystem, the undersigned recognize the importance of safeguarding consumers' personal information, since our business success depends upon maintaining and strengthening the trust of our customers.

The internet has thrived under the technology-neutral, unified privacy obligations developed by the FTC, which work effectively to balance the need for privacy protection with the objectives of promoting innovation, investment, and new services for consumers. Instead of mirroring the FTC's well-established and time-tested approach, the FCC unnecessarily imposed new privacy restrictions that will disserve consumers and stifle innovation in the online marketplace.

Amongst other flaws, the FCC Order would create confusion and interfere with the ability of consumers to receive customized services and capabilities they enjoy and be informed of new products and discount offers. Further, the Order would also result in consumers being bombarded with trivial data breach notifications. The FCC greatly expands the category of information for which a breach notification would be necessary, even if the consumer is not harmed. The FCC disregards the FTC's warning about notice fatigue in that consumers who receive too many notices may ignore the important ones.

We support the goal of ensuring that consumers' online activities are subject to privacy and data security protections that comport with consumer expectations and long-standing privacy policies that have both protected consumers from harm and allowed the internet to flourish. However, the FCC's Order would significantly harm consumers as well as our nation's digital economy.

Invoking Congress's prerogative as provided in the CRA will help clear the way toward re-establishing a consistent, uniform set of privacy protections for consumers across the internet. We therefore urge Congress to enact a resolution of disapproval to vitiate the FCC's Order.

Sincerely,

