



AMERICA'S
COMMUNICATIONS
ASSOCIATION

#ACAConnects

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March 26, 2019

The Honorable Roger Wicker, Chairman
The Honorable Maria Cantwell, Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate
Washington, DC 20510

The Honorable Jerry Moran, Chairman
The Honorable Richard Blumenthal, Ranking Member
Subcommittee on Manufacturing, Trade, and Consumer Protection
Committee on Commerce, Science, and Transportation
United States Senate
Washington, DC 20510

Re: Hearing on Small Business Perspectives on a Federal Data Privacy Framework

Dear Chairmen Wicker and Moran and Ranking Members Cantwell and Blumenthal,

ACA Connects – America's Communications Association applauds the Subcommittee on Manufacturing, Trade, and Consumer Protection for holding its March 26, 2019 hearing on Small Business Perspectives on a Federal Data Privacy Framework. ACA Connects represents more than 700 small businesses providing broadband, video, and other communications services to approximately 8 million subscribers, primarily in rural communities, across the United States. Because our members are small businesses that collect, and may use or share to provide communications services, personal information from their customers, they have an intense interest in Congress' consideration of legislation that would impose on them new privacy and data security requirements. As I discuss in this letter, ACA Connects believes new federal legislation should continue to rely upon the "risk-based" approach. Accordingly, providers that do not use or share personal information or that use such information for very limited purposes should not be covered by new requirements in this legislation. In addition, Congress should refrain from subjecting ACA Connects' small business members to new privacy requirements.

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At the outset, it is important to recognize that today, for each of the communications services they provide, ACA Connects' small business providers are subject to federal privacy and data security statutory requirements and often to state laws and regulations. For instance, pursuant to Section 631 of the Communications Act, as amended (the "Act"), which has been in effect since 1984, cable service providers must inform customers of any personally identifiable information they collect and give customers access to review that information. For telecommunications services, they must comply with the Customer Proprietary Network Information protections of Section 222 of the Act, and for broadband services, they are subject to Section 5 of the Federal Trade Commission Act and similar State consumer protection statutes. Despite the rigors of having to comply with these disparate legal and regulatory regimes, the small business members of ACA Connects have developed an exceptional record of compliance.

Small communications providers primarily collect and use personally identifiable information from their customers for a single purpose – to provide the communications services they offer over their networks. They thus often collect and use data to notify a customer about a change in the terms of service or to market a new service. Rarely do smaller providers use this information to market a product or service unrelated to their services, collect sensitive personal information, which they would use to market products or services, or share data with unaffiliated entities. As such, smaller providers are hardly in a position to misuse their customers' personally identifiable information, much less actually engage in such misuse.

ACA Connects believes any new federal privacy legislation should continue to rely upon the "risk-based" approach in current laws and regulations. This would reflect consumers' expectations, and it would focus enhanced requirements where they are most needed -- on those providers that collect, maintain, or share with unaffiliated entities substantial amounts of personal, especially sensitive, information that is then used to market services unrelated to the provider's primary business.

Any new privacy legislation thus should recognize that ACA Connects' small business providers, when they use or share personally identifiable information, are already subject to numerous privacy laws and regulations, and it should account for the fact that these providers have relatively limited resources to comply with regulations and lack the scale and scope to spread the costs of compliance. As such, the imposition of onerous new requirements on them would serve little or no purpose while sapping resources that they could use to invest in their networks and services. It also would place them at a competitive disadvantage to larger businesses, who are much better equipped to handle government-imposed compliance obligations. This would not only harm existing small businesses but deter entry by new ones. The California Consumer Privacy Act addressed this issue by exempting smaller businesses, including those with fewer than 50,000 customers, households, or devices or less than \$25 million in annual revenues. Senator Wyden addressed this issue in last year's draft Consumer Data Protection Act by exempting providers that have not greater than \$50 million in average

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annual gross receipts over a three-year period and that collect personal information from fewer than 1 million consumers and devices. In sum, there is ample precedent, as well as good cause, to not burden small communications providers with additional privacy requirements. As a result, Congress should include in any privacy legislation a provision exempting small communications providers that collect personal information from fewer than 1 million consumers from any new requirements.

In addition, new privacy legislation should build upon the Cable Privacy and the Customer Proprietary Network Information statutes' provisions that permits communications providers to use, disclose, or otherwise permit access to customer information for a series of limited purposes related to the provision of communications services. ACA Connects submits any new privacy requirements should continue to allow and not impose additional obligations on providers that collect and use personally identifiable information for the following limited purposes: to initiate, render, and bill and collect for services that a customer has purchased; to render, or conduct a legitimate business activity related to, a communications service; to prevent fraud and other unlawful activities; to protect public safety and security; and to comply with legal requirements.

ACA Connects appreciates your consideration of its thoughts and proposals on how to treat its small businesses in legislation adopting new privacy requirements. We stand ready to work with you as you consider new privacy legislation.

Sincerely,



Matthew M. Polka