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October 11, 2016

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Protecting the Privacy of Customers of Broadband and Other
Telecommunications Services
WC Docket No. 16-106
Notice of Ex Parte Presentation**

Dear Ms. Dortch:

On October 6, 2016, Deborah J. Salons and S. Jenell Trigg (via telephone) of Lerman Senter PLLC, and the undersigned, representing the Wireless Internet Service Providers Association (“WISPA”), met with Travis Litman, Senior Legal Advisor in the Office of Commissioner Rosenworcel, to discuss the rules proposed in the *NPRM* in the above-referenced proceeding for protecting the privacy of customers of broadband and other telecommunication services.¹

The WISPA representatives highlighted issues consistent with WISPA’s Comments² and Reply Comments³ submitted in the above-referenced proceeding. The WISPA representatives emphasized the burdens enhanced privacy regulations will have on small broadband providers and the consumers they serve, and are encouraged by the recognition of small businesses in Chairman Wheeler’s Fact Sheet released earlier in the day.⁴ We expressed support for a delayed compliance implementation schedule based on size tiers in which the providers with the smallest

¹ *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Notice of Proposed Rulemaking, WC Docket No. 16-106, 31 FCC Rcd 2500 (rel. April 1, 2016) (“*NPRM*”).

² Comments of WISPA, WC Docket No. 16-106 (filed May 27, 2016) (“WISPA Comments”).

³ Reply Comments and Additional Comments on the Initial Regulatory Flexibility Analysis of WISPA, WC Docket No. 16-106 (filed July 6, 2016) (“WISPA Reply Comments”).

⁴ Fact Sheet: Chairman Wheeler’s Proposal to Give Broadband Consumers Increased Choice over Their Personal Information (rel. Oct. 7, 2016) (“Fact Sheet”). The WISPA representatives are encouraged that the Fact Sheet states that the proposed rules “reflect careful consideration of the needs of smaller ISPs,” and the framework for consumer choice is now “focus[ed] on the sensitivity of the information – rather than how it is used” *Id.* at 1. We are also supportive that the proposed security measures “require that an ISP’s practices be appropriately calibrated to the nature and scope of its activities, the sensitivity of the provider *and the size of provider and technical feasibility.*” *Id.* at 3 (emphasis added).



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number of customers would have the longest time to comply with whatever rules the Commission adopts. The WISPA representatives further explained that the proposed rules cannot be looked at in a vacuum, as small providers are or may be subject to a “grand slam” of regulations: Title II regulation, enhanced transparency rules, outage reporting requirements and the proposed privacy rules.

The WISPA representatives expressed support for adoption of rules based on the Federal Trade Commission’s approach and an opt-out regime for non-sensitive personally identifiable information. WISPA expressed concern that the information categorized as sensitive would be over-inclusive. We also expressed concern regarding what may constitute a “material” change to a privacy policy that would trigger notice requirements directly to a customer and suggested that the Commission adopt a definition of “material” that considers the effect of a privacy policy change on the rights and obligations of existing customer. We explained that it is possible to make substantial changes to a privacy policy when adding new features or services, without changing an existing customer’s opt-in or opt-out rights, or the collection, use or disclosure of a customer’s Customer Proprietary Information. We also expressed concern that the definition of “customer” should be clarified, and that more details are necessary to determine what kind of an applicant would fall into the category of “customer.”

The WISPA representatives explained that the proposed seven-day data breach notification requirement to the FCC was too short, stated that at seven days many providers do not have sufficient facts to report, and suggested that fourteen business days would be a more reasonable notification period. The WISPA representatives also emphasized that proposed Section 64.7005(b) of the rules pertaining to security measures should include language that requires the Commission to consider the provider’s size in determining whether its data security measures are “reasonably implemented.” Finally, we raised a concern regarding the security breach notification requirements under Section 64.7006(a)(2)(v) that the proposed requirement for information to consumers about national credit-reporting agencies would be unnecessarily alarming and confusing to consumers that were not subject to breaches that implicated financial harm. We questioned how Equifax, TransUnion, or Experian’s various credit monitoring services would address any perceived or potential problem for other types of harm (e.g. reputational harm) and requested flexibility to provide information to a consumer regarding a credit-reporting agency based on the scope and nature of the breach, and type of harm at risk.

Pursuant to Section 1.1206 of the Commission’s Rules, this letter is being filed electronically via the Electronic Comment Filing System in the above-captioned proceeding.

Respectfully submitted,

/s/ Stephen E. Coran
Stephen E. Coran

cc: Travis Litman