

MARSHA BLACKBURN

7TH DISTRICT, TENNESSEE

DEPUTY WHIP

COMMITTEE ON
ENERGY AND COMMERCE
VICE-CHAIRMAN

COMMITTEE ON
THE BUDGET

1032

Congress of the United States
House of Representatives
Washington, DC 20515-4207

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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


Robert E. Latta
Member of Congress


Mike Pompeo
Member of Congress


Gus M. Bilirakis
Member of Congress


Billy Long
Member of Congress


Pete Olson
Member of Congress



Brett S. Guthrie
Member of Congress



Bill Johnson
Member of Congress



Renee Ellmers
Member of Congress



Leonard Lance
Member of Congress



Chris Collins
Member of Congress



Adam Kinzinger
Member of Congress



Kevin Cramer
Member of Congress



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

November 10, 2015

The Honorable Joe L. Barton
2107 Rayburn House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Barton:

Thank you for your letter raising concerns about the Federal Communications Commission's role in ensuring that broadband Internet access service providers protect the privacy of their customers' confidential information.

The FCC has long-standing expertise on consumer privacy. As the expert agency on telecommunications services, we have the benefit of staff with both deep knowledge about the information that network providers must collect to provide telecommunication services and policy expertise on consumer protection issues relating to the collection and sharing of such information. That is why Congress gave the FCC authority over the collection and use of such information by providers of telecommunications services in section 222 of the Communications Act. The FCC first adopted rules governing telecommunications providers' use of customer proprietary network information (CPNI) pursuant to section 222 in 1997. Since then, it has continued to refine and vigorously enforce those rules. As a result, there is broad agreement that consumers have benefited greatly from having the control over their CPNI that is provided by the current set of section 222 rules.

Congress has also given the FCC other privacy-related authority – including overlapping jurisdiction with the FTC over Do-Not-Call and Can-Spam; and separate authority in the case of the Truth in Caller Identification Act, the Telephone Consumer Protection Act and privacy-related authority over cable and satellite television providers. As a result, over the last two-decades, the FCC has worked closely with the FTC and the State Attorneys General on privacy-related issues running the gamut from the pretexting of consumers' call detail information to Do-Not-Call rulemaking and coordination of enforcement work. Rather than cause uncertainty or confusion, this on-going collaboration and consultation protects the American consumer and creates complimentary guidelines.

While the Commission chose to forbear from applying some of the provisions of Title II of the Communications Act to broadband Internet access service providers it did not forbear from applying section 222 in light of the important consumer privacy interests at issue. At the same time we recognized that the existing section 222 rules that apply to voice services were not a perfect fit. While we are still considering how best to approach a rulemaking, I can assure you that any such rulemaking will provide

ample opportunity for robust input from consumers, providers, and all other stakeholders. We take our obligation to protect the privacy of broadband customers' confidential information very seriously.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", with a stylized flourish extending to the right.

Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

November 10, 2015

The Honorable Gus Bilirakis
2313 Rayburn House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Bilirakis:

Thank you for your letter raising concerns about the Federal Communications Commission's role in ensuring that broadband Internet access service providers protect the privacy of their customers' confidential information.

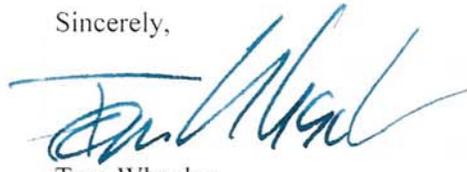
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Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

November 10, 2015

The Honorable Marsha Blackburn
217 Cannon House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Congresswoman Blackburn:

Thank you for your letter raising concerns about the Federal Communications Commission's role in ensuring that broadband Internet access service providers protect the privacy of their customers' confidential information.

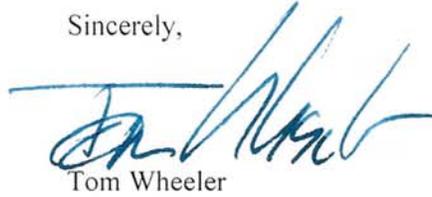
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Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

November 10, 2015

The Honorable Chris Collins
1117 Longworth House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Collins:

Thank you for your letter raising concerns about the Federal Communications Commission's role in ensuring that broadband Internet access service providers protect the privacy of their customers' confidential information.

The FCC has long-standing expertise on consumer privacy. As the expert agency on telecommunications services, we have the benefit of staff with both deep knowledge about the information that network providers must collect to provide telecommunication services and policy expertise on consumer protection issues relating to the collection and sharing of such information. That is why Congress gave the FCC authority over the collection and use of such information by providers of telecommunications services in section 222 of the Communications Act. The FCC first adopted rules governing telecommunications providers' use of customer proprietary network information (CPNI) pursuant to section 222 in 1997. Since then, it has continued to refine and vigorously enforce those rules. As a result, there is broad agreement that consumers have benefited greatly from having the control over their CPNI that is provided by the current set of section 222 rules.

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Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

November 10, 2015

The Honorable Kevin Cramer
1032 Longworth House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Cramer:

Thank you for your letter raising concerns about the Federal Communications Commission's role in ensuring that broadband Internet access service providers protect the privacy of their customers' confidential information.

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Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

November 10, 2015

The Honorable Renee Ellmers
426 Cannon House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Congresswoman Ellmers:

Thank you for your letter raising concerns about the Federal Communications Commission's role in ensuring that broadband Internet access service providers protect the privacy of their customers' confidential information.

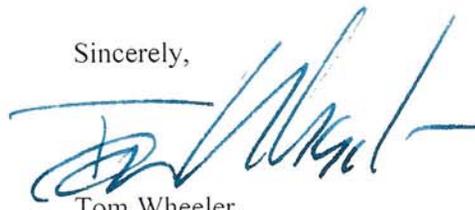
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Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

November 10, 2015

The Honorable Brett Guthrie
308 Cannon House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Guthrie:

Thank you for your letter raising concerns about the Federal Communications Commission's role in ensuring that broadband Internet access service providers protect the privacy of their customers' confidential information.

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