



To: Montana Legislature
From: Bethanne Cooley, CTIA
Date: April 6, 2017
RE: Opposition, Prohibitions on Telecommunications Providers & ISPs

On behalf of CTIA, the trade association for the wireless communications industry, we are writing to express concerns with legislative attempts to impose unnecessary restrictions on the way in which telecommunications providers and Internet Service Providers (ISPs) do business in the state of Montana. Understanding that comparable language to the amendment adopted in House Bill 2 may be included in other legislative vehicles, raises serious concerns for CTIA.¹ Indeed, the proposed language would make it impossible for any ISP to operate in Montana. The bill would have a host of unintended consequences and would not effectively protect consumer privacy on the Internet.

The wireless industry takes a proactive and serious approach to protecting consumer privacy. Each of our members have in place a privacy policy, which clearly describes to their customers how customer data will be protected. Current federal and state statutes provide an additional layer of protection for sensitive consumer information. However, language, such as the amendment adopted in House Bill 2, imposes unjustified restrictions on ISPs, and deviates from the privacy framework and standards that have been in place for decades. Therefore, we are writing in strong opposition to any legislative attempts to adopt this language. The legislation is unnecessary and will create inconsistent privacy standards for different parts of the Internet ecosystem that will confuse consumers and undermine privacy.

The wireless industry firmly believes that our customers deserve a wireless experience that is safe and secure. For this reason, amongst others, the wireless industry has set forth strong voluntary guidelines in, "CTIA's Consumer Code for Wireless Service."² These principles, along with current technology-neutral regulation at the state and federal level, help protect our customers. This 12- point code, originally developed in 2003 and regularly updated, helps consumers make informed choices when selecting their wireless service. Specifically, Point 10, "Abide by Policies for Protection of Customer Privacy," affirms that each wireless carrier will abide by a policy regarding the privacy of customer

¹ House Bill 2 Amendment, <http://leg.mt.gov/bills/2017/AmdHtms/HB0002-A004.HTM>, last accessed 4/6/2017.

² CTIA Consumer Code for Wireless Service, <http://www.ctia.org/initiatives/voluntary-guidelines/consumer-code-for-wireless-service>, last accessed 4/5/2017.



information in accordance with applicable federal and state laws, and will make available to the public its privacy policy concerning information collected online. The wireless industry recognizes the importance of customers' privacy, and we take strong measures to ensure our customer's data is secure and protected.

Language comparable to the amendment adopted in House Bill 2 imposes excessive and unnecessary requirements on CTIA members. The legislation would essentially create two sets of "rules of the road" by laying the framework for new rules that are different for various entities of the Internet and wireless ecosystem, harming competition and leaving consumers uncertain of which rules apply to their data. Survey data submitted to the FCC last year showed that 94% of Internet users believe all companies touching their online data should follow the same privacy rules.³ These findings conclude that legislation comparable to the amendment adopted in House Bill 2, which directly targets ISPs, is not only unfair and discriminatory, but also contradicts preferred rules and frameworks that customers expect from companies that have access to their data. It would not effectively protect consumer privacy on the Internet because many other companies would continue to collect and use web browsing data without being subject to the consent requirement.

Recent Congressional actions did not change the privacy protections of our customers. In fact, the FCC's proposed rules had not yet taken effect, so nothing has changed from the regulatory framework that has existed for the past two years. The current FCC Chairman has clearly stated that "Internet service providers have been – and will continue to be – obligated to comply with Section 222 of the Communications Act and other applicable federal and state privacy, data security, and breach notification laws."⁴ Furthermore, the leading ISPs, including CTIA members, have all recently recommitted principles to maintaining privacy protections that are consistent with the FTC's effective privacy framework, covering transparency, consumer choice, security, and data breach notifications.⁵

³ The Progressive Policy Institute, "Consumers Want One Set of Rules Protecting Their Information," <http://www.progressivepolicy.org/press/press-releases/press-release-consumers-want-one-set-rules-protecting-information/>, last accessed 4/5/2017.

⁴ Letter from FCC Chairman Ajit Pai to Sens. Markey, Blumenthal, Warren, Franken at http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0317/DOC-343949A1.pdf, last accessed 4/6/2017.

⁵ "Protecting Consumer Privacy Online," <http://www.ctia.org/docs/default-source/default-document-library/final---protecting-consumer-privacy-online.pdf>, last accessed 4/5/2017.



Additionally, the concerns that ISPs, including CTIA members, have unique access to customer data online are unfounded. A comprehensive study by veteran Clinton and Obama Administration privacy expert Peter Swire showed that ISPs actually have limited insight into consumer activities and information online. This bill unnecessarily targets one set of providers - telecommunications providers and Internet service providers - and treats them differently than others in the Internet ecosystem.⁶

In closing, CTIA members are absolutely committed to protecting our customer's information as their business and brand depend on our customer's trust. Existing federal law and protections remain intact today rendering the legislation before you unnecessary. For the reasons described herein, we respectfully ask for your rejection of any legislation comparable to the amendment adopted in House Bill 2.

⁶ "Online Privacy and ISPs: ISP Access to Consumer Data is Limited and Often Less than Access by Others," http://www.iisp.gatech.edu/sites/default/files/images/online_privacy_and_isps.pdf, Swire, Peter, last accessed 4/5/2017:

"ISP access to user data is not comprehensive – technological developments place substantial limits on ISPs' visibility. [And] ISP access to user data is not unique – other companies often have access to more information and a wider range of user information than ISPs."