

March 8, 2017

The Honorable John Thune, Chairman
The Honorable Bill Nelson, Ranking Member
U.S. Senate Committee on Commerce, Science, & Transportation
512 Dirksen Senate Office Building
Washington, DC 20510

RE: Hearing on “Oversight of the Federal Communications Commission”

Dear Chairman Thune and Ranking Member Nelson:

We write to you regarding the upcoming hearing on “Oversight of the Federal Communications Commission” that will be held on March 8, 2017. Privacy is within the FCC’s jurisdiction as it applies to consumer information that is collected via channels of communications regulated by the FCC. We urge the Committee to question the witnesses on how they view the FCC’s role in protecting privacy.

Last year, EPIC urged the FCC to adopt strong privacy rules that applied to Internet Service Providers (“ISPs”) and edge providers alike.¹ It is clear that the FCC has jurisdiction to apply privacy rules to consumer data collected via the internet in the same manner they do for other methods of communication. Unfortunately, the rules that were adopted only applied to ISPs. Stronger rules for online privacy are necessary for the FCC to fulfill its obligation to consumers to protection online privacy.

Recent reports have indicated that the FCC is now considering a dramatic shift in online privacy and believes that the issue is instead within the jurisdiction of the Federal Trade Commission. But as the agency primarily responsible for regulating communications, the FCC is in the best position to protect online privacy. Furthermore, the FTC has shown a lack of willingness to protect consumer privacy online and has allowed edge providers to act in a manner that is contrary to consumer’s best interests.²

As Chairman Pai noted in his dissenting opinion, “The era of Big Data is here. The volume and extent of personal data that edge providers collect on a daily basis is staggering So if the FCC truly believes that these new rules are necessary to protect consumer privacy, then the government must now move forward to ensure uniform regulation of all companies in the

¹ EPIC Statement, *FCC Overreach: Examining the Proposed Privacy Rules*, hearing before the House Committee on Energy and Commerce, Subcommittee on Communications and Technology, Jun. 13, 2016.

² Letter from EPIC, et al. to FCC Chairman Tom Wheeler on ISP Data Practices (Mar. 7, 2016), <https://epic.org/privacy/consumer/Broadband-Privacy-Letter-to-FCC.pdf>; Memo from EPIC to Interested Persons on FCC Communications Privacy Rulemaking (Mar. 18, 2016), <https://epic.org/privacy/consumer/EPIC-Draft-FCC-Privacy-Rules.pdf>; EPIC, *EPIC v. FTC (Enforcement of the Google Consent Order)*, <https://epic.org/privacy/ftc/google/consent-order.html>.

Internet ecosystem at the new baseline the FCC has set.”³ We agree with Chairman Pai that ISPs and “edge providers” should not be treated differently. Therefore, the FCC should strengthen the privacy rules recently adopted, not weaken them and pass this matter onto the FTC. The FCC is responsible for regulating communications and therefore is responsible for ensuring privacy over communications platforms. We obviously oppose efforts to weaken current privacy and safeguards for American consumers.

EPIC would also like to bring to the Committee’s attention our 2015 petition to repeal the bulk collection and retention of telephone data of American consumers.⁴ EPIC’s petition urged the FCC to repeal an outdated rule that requires that telephone records be collected and saved for 18 months and requires telecommunications carriers to retain sensitive information on all of their customers.⁵ Law enforcement agencies have conceded that the need for the collection and retention of such data on a mass scale is no longer necessary.⁶ Further, privacy advocates are concerned that the bulk collection of telephone records places consumer privacy at risk by revealing intimate details about their daily lives and subjecting consumers to an increased potential for identity theft.⁷ Recent developments in international law have even called into question whether the bulk retention of telephone data could be Constitutionally permissible in countries where the right to privacy is considered a fundamental right.⁸

The EPIC petition requests that the public be given the opportunity to comment on whether this policy is still necessary given its admitted ineffectiveness for law enforcement purposes and the privacy risks involved in its continuation. Many civil liberties organizations and privacy experts supported EPIC’s petition. Yet the FCC has failed to take any action. We urge the Committee to push for the prompt repeal of this regulation.

We ask that this letter be entered in the hearing record. EPIC looks forward to working with the Committee on these issues of vital importance to the American public.

Sincerely,

/s/ Marc Rotenberg
Marc Rotenberg
EPIC President

/s/ Caitriona Fitzgerald
Caitriona Fitzgerald
EPIC Policy Director

³ *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, dissenting statement of Commissioner Ajit Pai, WC Docket No. 16-106.

⁴ *EPIC Petition to Repeal 47 C.F.R. §42.6, Federal Communications Commission (“Retention of Telephone Toll Records”)*, Aug. 4, 2015, <https://epic.org/privacy/fcc-data-retention-petition.pdf>.

⁵ 47 C.F.R. §42.6.

⁶ Dept. of Justice and Homeland Security, Comment Letter on Notice of Rulemaking In the Matter of Implementation of the Telecommunications Act of 1996, at 10 (Apr. 28, 2006), CC Docket No. 96-115.

⁷ *Petition to Repeal 47 C.F.R. §42.6*.

⁸ Court of Justice of the European Union, *The Court of Justice Declares the Data Retention Directive to be Invalid*, (Apr. 8, 2014) (“It entails a wide-ranging and particularly serious interference with the fundamental rights to respect for private life and to the protection of personal data, without that interference being limited to what is strictly necessary.”), http://curia.europa.eu/jcms/jcms/P_125951/.

/s/ Kim Miller
Kim Miller
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