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ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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July 5, 2016

The Honorable Jon Leibowitz
Co-chair
21st Century Privacy Coalition
901 15th Street, N.W.
Washington, DC 20005

Dear Mr. Leibowitz:

Thank you for appearing before the Subcommittee on Communications and Technology on Tuesday, June 14, 2016, to testify at the hearing entitled "FCC Overreach: Examining the Proposed Privacy Rules."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Tuesday, July 19, 2016. Your responses should be mailed to Greg Watson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Greg.Watson@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna G. Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

Attachment — Additional Questions for the Record

The Honorable Greg Walden

1. How and why does the FCC's approach falls short to protect consumers in current form? Do you have any suggestions for the FCC on how it could improve the proposal?
2. During your tenure at the FTC, first as a commissioner, then as chairman, did the agency ever come to the conclusion that ISPs alone posed a unique problem in terms of privacy that warranted a more stringent and restrictive set of privacy obligations for them? Has anything changed since then?
 - a. During your tenure as FTC Chairman, the White House and Commerce Department also issued a privacy report and Consumer Privacy Bill of Rights regarding commercial uses of data. Did the Administration single out ISPs for special treatment or identify any unique problems associated with ISPs in setting forth its privacy policies and standards? Has anything changed since then?

The Honorable Adam Kinzinger

1. Mr. Leibowitz, in your testimony you went into detail on the differences between the FTC's current approach to data breach notification and the FCC's proposed regulation. You say that a balanced approach will avoid over-notification which would confuse customers and cause them to ignore notices they receive. Can you elaborate on this point? How does an optimal approach determine when a customer needs to be notified?
2. Mr. Leibowitz, the FTC staff noted that the FCC's proposed data breach notification timeline would not allow companies adequate time to conduct an investigation. Do you agree with that conclusion?

The Honorable Gus Bilirakis

1. Mr. Leibowitz, Professor Lawrence Tribe from Harvard had an interesting Constitutional argument in his comments to the FCC about restrictions to commercial speech. Do you think we are looking at another issue in which we will all become court watchers and have to wait for months for a First Amendment challenge to work its way through the courts?
2. Mr. Leibowitz, can you expand on your concern that this new framework creates a serious risk of unforeseen consequences? Do you think the FCC appropriately took these into account? In your time at the FTC, how did you evaluate similar potential disruptions to consumer expectations and unequal application of consumer protections?