May 4, 2017

Senator Daniel Innis
Chairman, Senate Commerce Committee
State House, Room 115
107 North Main Street
Concord, NH 03301

[Sent Electronically for Distribution]

RE: Proposed Amendment 2017-1550s to HB 305 relating to protecting the privacy and security of internet users – OPPOSE

Dear Chairman Innis:

The undersigned associations write to respectfully oppose proposed amendment 2017-1550s to HB 305. This bill, if passed, creates serious unintended consequences and would negatively impact consumers, business and the Internet. It would foster a complicated regulatory structure at the state level for a sector that is best addressed via a national approach. Proposed amendment 2017-1550s would make New Hampshire a far more difficult place to innovate on the Internet, ultimately hurting the information economy that has become an important part of the state’s economy.

The undersigned associations oppose this legislation because it would contribute to an unworkable “patchwork” of state privacy laws, and risks unnecessary harm to the information economy.

Consumers and Businesses Can Rely on the Federal Approach to Privacy. The recent repeal of the Federal Communication Commission’s (“FCC”) Broadband Privacy Rules does not mean that consumers will be left unprotected. In fact, Internet Service Providers (“ISPs”) have been and will continue to be substantially regulated at the federal level. Prior to the FCC’s decision to adopt the Broadband Privacy Rules, it issued a wide-ranging enforcement advisory opinion, making it clear that the Communications Act (Section 222) applies to ISPs. This guidance continues to apply today. The recent action by Congress and the President does not change or alter the obligations of ISPs under Section 222, or the FCC’s ability to enforce noncompliance. Nor does the recent repeal of the Broadband Privacy Rules create new rights or powers for ISPs because the rules never went into effect. As such, consumers continue to be protected under existing FCC authority.
Following the decision to repeal the FCC’s Broadband Privacy Rules, FCC Chairman Ajit Pai announced that the FCC would be working with the Federal Trade Commission (“FTC”) to restore the FTC’s authority over ISP privacy practices.\footnote{FEDERAL COMM’N COMMC’N, Statement of Chairman Pai on President Signing Cong. Resolution of Disapproval (April 3, 2017), available at \url{https://www.fcc.gov/document/statement-chmn-pai-president-signing-cong-res-disapproval}.} Chairman Pai reiterated that the FTC is and has been the regulatory leader with respect to privacy, and that we need to “end the uncertainty and confusion that was created in 2015 when the FCC intruded in this space.”\footnote{Id.} As indicated by Chairman Pai, consumers need greater certainty and clarity with respect to privacy regulation, and this certainty and clarity will be achieved at the federal level. Greater certainty and clarity will not be achieved through states entering into a regulatory space that has been historically addressed through a national approach.

**Proposed amendment 2017-1550s Would Disrupt the Internet and Harm Consumers.** Proposed amendment 2017-1550s would greatly exacerbate the growing “patchwork” of state laws on privacy practices. Unlike in other areas, state laws regulating the privacy practices of ISPs would be very difficult for companies to implement and would affect how consumers experience the Internet. This patchwork would force consumers to face a constant drumbeat of confusing and frustrating requests for consent to use the Internet for routine purposes that would vary depending upon the state where the consumer lives. A state-by-state approach, which will vary as each state debates and passes legislation, will inevitably be worse for consumers and organizations. The Internet cannot function as it has if each state is individually regulating how the Internet operates. Such state-by-state legislation would be incredibly disruptive.

The unprecedented growth and success of the Internet over the past two decades, and the high rate of consumer adoption that goes along with it, demonstrates that consumers are pleased with the Internet that has developed under current law. They are increasingly relying on the free and low-cost access to entertainment, news, and financial services, and other useful content that the Internet offers. By destabilizing the ecosystem, proposed amendment 2017-1550s threatens the “free Internet” that has become part of the daily lives of millions of American consumers.

Advocates for proposed amendment 2017-1550s and similar bills in other states have failed to identify a single, concrete harm that would be remedied through it. Instead, proponents of proposed amendment 2017-1550s have offered a speculative “parade of horribles” without justification or evidence.

**Proposed amendment 2017-1550s Has Not Undergone Adequate Review or Analysis.** Proposed amendment 2017-1550s is attempting to regulate in a complicated, highly technical area despite the fact that it has not received sufficient analysis. Prior to enacting the Broadband Privacy Rules, the FCC underwent an extensive rulemaking process, receiving comments from organizations, building a record, and contemplating stakeholder concerns. After a year of regulatory consideration, the FCC released the final Broadband Privacy Rules. Proposed amendment 2017-1550s, however, is merely a reaction to the decision to repeal the FCC’s Broadband Privacy Rules, and is not the product of a deliberative, thoughtful legislative process.

Proposed amendment 2017-1550s was hastily drafted, was not properly vetted, and, as a result, is poorly constructed. Proposed amendment 2017-1550s has been introduced at the end of New Hampshire’s legislative session, forcing members to move forward without fully understanding the
impact of the legislation, and without giving members adequate time to address issues with the
language in the legislation.

**Proposed Amendment 2017-1550s Would Stifle Economic Growth and Innovation.** According to the
Value of Data report commissioned by the DMA in 2015, the Data-Driven Marketing Economy
generated $202 billion in revenue and 966,000 jobs in 2014. Similarly, the Interactive Advertising
Bureau (“IAB”) commissioned a study, which revealed that the advertising supported Internet
ecosystem generated $1.121 trillion for the U.S. economy in 2016, accounting for 6% of U.S. GDP,
double its contribution in 2012. The IAB study also noted the advertising-supported Internet ecosystem
created 10.4 million jobs in the United States, a 104% increase from 2012. The regulatory landscape
for the Internet that existed prior to the FCC’s rules helped facilitate these significant economic
developments. Proposed amendment 2017-1550s would stifle that growth. A recent Zogby Analytics
poll commissioned by the Digital Advertising Alliance (“DAA”) shows that consumers assign a value
of almost $1,200 a year to ad-supported online content. Ad-supported online content is the backbone
upon which the Internet as we know it is built. Altering it or disrupting it would be very harmful to the
Internet’s role as an economic engine for the American economy.

We have already seen the disruptive effects of restrictive requirements for the Internet in other regions,
including Europe. It is no coincidence that the major Internet and technology companies in the world
were developed in the United States, under the privacy regime that existed before the FCC’s Broadband
Privacy Rules were adopted. A state-by-state approach on privacy, such as the one set forth in
Proposed amendment 2017-1550s, would put the United States in an inferior competitive position and
harm the American economy as a result.

Because it is unnecessary for consumers as they already receive significant protections under federal
rules, unduly burdens New Hampshire’s businesses (both small and large), and negatively impacts New
Hampshire’s tech and data-driven economy, the undersigned associations respectfully oppose proposed
amendment 2017-1550s.

Sincerely,

DMA – Data & Marketing Association
4A’s – American Association of Advertising Agencies
AAF – American Advertising Federation
ANA – Association of National Advertisers
IAB – Interactive Advertising Bureau
Internet Association
Internet Coalition
NetChoice
TechNet

cc: Senator Harold French, Vice Chairman
    Senator Andy Sanborn
    Senator Bette Lasky
    Senator Donna Soucy