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Washington, DC 20580**

In the Matter of
Request for Comments on the Hearings on
Competition and Consumer Protection in the 21st Century

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COMMENTS OF VERIZON

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Verizon files these comments in response to the June 20, 2018, Request for Comments on the Topics for the Hearings on Competition and Consumer Protection in the 21st Century. We support the Commission for undertaking this comprehensive assessment of its policies and procedures in a variety of areas within its mission, and hope that these comments responsive to Topic Nos. 1, 2, 3, 4, 5 6, 7, 8, and 10 are helpful to the agency as it considers its policy and enforcement approach for the future.

INTRODUCTION

Verizon delivers the promise of the digital world to millions of customers every day. Created eighteen years ago by the merger of telephone companies Bell Atlantic and GTE Corp., Verizon has eclipsed its then traditional wireline and incipient wireless business to become a global technology company. Today, Verizon has more than 116 million retail wireless connections, running over our best-in-class networks. We are poised to be the leader in deployment of 5G services with our announcement that we will launch commercially in four cities this year. We continue to have a regional wireline presence in which we serve customers with our award-winning Fios products over an all-fiber network. And in recent years, through mergers and acquisitions, we created Oath, a company that includes diverse media and technology brands that engage approximately one billion global content consumers, as well as a growing online advertising platform.

The world likewise has changed over these past 25 years – and even in just the last decade since the Federal Trade Commission (FTC) staff released the *2007 Broadband Report*.¹ When the FTC held its 1995 Pitofsky hearings on competition, key concerns involved clearing

¹ FTC Staff Report, Broadband Connectivity Competition Report (June 2007), <https://www.ftc.gov/sites/default/files/documents/reports/broadband-connectivity-competition-policy/v070000report.pdf> (“2007 Broadband Report”).

the way for innovation to enable US companies to compete with foreign companies entering US markets and in the nascent global post-Cold War marketplace. Since then, American companies have helped create transformative technologies, grow new markets and business models, and change consumer expectations. Communications services and consumption of data have morphed as we have gone through 3G, 4G, and now stand on the precipice of 5G wireless services. And people today communicate in dramatically different ways than they used to: relying on email, text, online message, and social media, even as use of traditional landline voice has dropped dramatically. The current internet ecosystem is vastly different than even just ten years ago when digital platforms and the role of network effects significantly expanded. At the same time, new privacy, security, autonomy, and competition issues—in addition to broader political, civil rights, and social concerns—are shaping calls for antitrust and consumer protection agencies to widen or adjust their focus.

In light of these changes, we welcome the FTC’s new proceeding to evaluate the state of competition and consumer protection across industries, but especially in the digital (media, telecom and internet) ecosystems. The issues the FTC will address span Verizon as we work to deliver the promise of connection, humanability,² smart communities,³ and brands people love through our wireless, wireline, content, digital advertising, and IoT solutions businesses.

Throughout our businesses, we work to focus outward on the customer. This emphasis, as well as the recent changes in the internet ecosystems and ongoing debates over the goals of

² Humanability is Verizon’s philosophy of using our infrastructure, technology and service to give humans the ability to do more in this world, by creating the connections that turn innovative ideas into reality.

³ See, e.g., <https://www.verizon.com/about/news/what-makes-smart-community>.

antitrust and attendant welfare standards should help inform the FTC’s analysis here.⁴ And in light of these discussions, we believe its assessment of the goals of antitrust should recognize that the consumer welfare standard is the standard best suited to the goal of promoting competition to focus on and serve consumers. But whatever standard the FTC embraces upon completing its review, the FTC should more clearly define what that standard entails. The consumer welfare standard, for example, is currently embraced by many (though admittedly not all)⁵ – but given very different meanings.⁶

The FTC should therefore take this opportunity to confirm that the appropriate standard focuses on the consumer by incorporating competitive process concerns, including economic price and non-price factors that capture quality and innovation. Providing this clarity and scope ensures that companies (big or small) who are competing fairly without creating barriers to entry or attempting to anticompetitively entrench their position have the opportunity to compete and enhance consumer choices, quality and/or price levels, whether in traditional types of markets or

⁴ Federal Trade Commission Press Release, “FTC Announces Hearings on Competition and Consumer Protection in the 21st Century” (June 20, 2018), <https://www.ftc.gov/news-events/press-releases/2018/06/ftc-announces-hearings-competition-consumer-protection-21st>.

⁵ See, e.g., Senate Judiciary Subcommittee on Antitrust, Consumer Protection and Consumer Rights, “The Consumer Welfare Standard in Antitrust: Outdated, or a Harbor in a Sea of Doubt?” (115th Cong. Dec. 13, 2017), statements by the Hon. Joshua Wright, <https://www.judiciary.senate.gov/imo/media/doc/12-13-17%20Wright%20Testimony.pdf>; Prof. Abbott “Tad” Lipsky, <https://www.judiciary.senate.gov/imo/media/doc/12-13-17%20Lipsky%20Testimony.pdf>; Dr. Diana Moss, <https://www.judiciary.senate.gov/imo/media/doc/12-13-17%20Moss%20Testimony.pdf>; Prof. Carl Shapiro, <https://www.judiciary.senate.gov/imo/media/doc/12-13-17%20Shapiro%20Testimony.pdf>; accord Sens. Mike Lee and Amy Senator Klobuchar (in favor of the consumer welfare standard); and statement by Barry Lynn, <https://www.judiciary.senate.gov/imo/media/doc/12-13-17%20Lynn%20Testimony.pdf> (in opposition to the consumer welfare standard).

⁶ Compare *id.* statements by Moss, Wright and Shapiro, all in favor of consumer welfare but with dramatically different explanations of what that standard entails.

those involving new technology or different economic structures and dynamics than those considered in 1995. At the same time, by delineating the scope of the consumer welfare standard the FTC can provide clarity that certain competition issues, particularly noneconomic factors affected by competition, do not fall within the purview of antitrust whether or not they remain within the jurisdiction of the FTC.

Further, while the FTC is well positioned to engage in a robust analysis and process as to both antitrust and consumer protections, it should recognize that there are still significant benefits that may stem from Congressional action on some or all of these issues. Resolving questions relating to privacy and net neutrality, as well as online non-discrimination, for example, may be best and most durably achieved with permanent, uniform legislation. To the extent that Congress does not act, the FTC's process should recognize important developments in privacy protections and concerns, and acknowledge the need for fair and non-discriminatory treatment across the internet ecosystem. Given its broad jurisdiction, the FTC is uniquely able to assess all entities in this space and their actions rather than focus solely on one type of entity or provider. Verizon, along with other providers, has strongly and publicly supported the open internet, and is committed to protecting consumers' ability to access it. We believe issues of privacy and internet openness are critical to how consumers communicate today; we also recognize that competition is continuing to give consumers multiple options in how they get and access information online. The FTC's approach, therefore, should acknowledge how consumers today interact with online service providers, and be careful not to prescribe regulatory disparities that would ignore consumer expectations or have unintended consequences that would not be advantageous to consumers.

I. The FTC’s Analysis Should Recognize the Importance of Focusing on Consumer Welfare, Especially in the Current and Evolving Internet Ecosystem

The way consumers interact with and use the internet provides insights that drive our business. It also drives competitive realities in both legacy and next-generation fields. And it should therefore also drive competition analysis by the FTC.

A. Verizon’s Business Reflects the Many Ways Consumers Experience and Use the Internet Today

Today’s consumers use the internet in millions of different ways. Our experience as a network and service provider, coupled with our business investments in online brands and advertising, offer a unique perspective on the types of regulatory frameworks that might best recognize that reality.

Since its inception, Verizon has invested tens of billions of dollars in capital in broadband networks.⁷ These investments are driven by growth in demand for ever faster and more reliable broadband access as consumers accelerate broadband, video, and data consumption online. As we prepare to launch the next generation of wireless services, 5G, we continue to work to deploy broadly, using thousands of “small cells” connected by fiber optic cables to dramatically enhance consumers’ wireless services.⁸

⁷ In 2017, Verizon invested \$17.2 billion in broadband networks, and in 2016 the figure was \$17 billion. Verizon, Verizon 2017 Annual Report, <https://www.verizon.com/about/sites/default/files/2017VerizonAnnualReport.pdf>.

⁸ This dense network will be provisioned over the 12.4 million miles of optical fiber Verizon has committed to purchase from Corning between 2018 and 2020, and a minimum investment commitment of \$1.05 billion. Corning, News Releases, “Verizon Agrees to \$1.05 Billion Three-Year Minimum Purchase Agreement with Corning for Next-Generation Optical Solutions” (Apr. 18, 2017), <https://www.corning.com/worldwide/en/about-us/news-events/news-releases/2017/04/verizon-agrees-to-1-point-05-billion-dollar-three-year-minimum-purchase-agreement-with-corning-for-next-generation-optical-solutions.html>.

In addition to investing in our own networks, Verizon has invested billions of dollars in businesses that rely on the ability to reach consumers across multiple platforms and systems. These include our multi-billion dollar investments in businesses that offer content or related services that, to work effectively and at scale, must travel over not just our own networks, but the last-mile networks of other providers. In mid-2017, Verizon completed its acquisition of Yahoo! and combined that business with AOL under our new subsidiary, Oath. Oath houses more than 50 technology and media brands that together engage more than a billion people around the world.⁹ These brands are part of our growing digital media presence, which is focused on creating new ways to reach and captivate global audiences both through original, engaging content—such as Yahoo Sports, HuffPost, Engadget, and TechCrunch—and comprehensive and efficient online advertising tools through Oath. Verizon Digital Media Services operates a global content delivery network and provides a variety of products and services that facilitate online video, data processing, and distribution across the internet.¹⁰ This next-generation platform provides users with an end-to-end solution to prepare, deliver, display, and monetize their content, including video service, monitoring, and content intelligence.¹¹

As a network operator, we are cognizant of ensuring our customers have the best possible experience over our networks and services. We have publicly committed to consumers our support for an open internet: consumers should be able to access the legal content of their choice

⁹ Oath, “Verizon and Yahoo creating Oath subsidiary” (June 13, 2017), <https://www.oath.com/2017/06/13/verizon-completes-yahoo-acquisition-creating-a-diverse-house-of/>.

¹⁰ See Verizon, Media & Technology, “Building brands people love,” <https://www.verizon.com/about/our-company/video-advertising>.

¹¹ See Verizon, Verizon Digital Media Services Platform, <https://www.verizondigitalmedia.com/>.

when and how they want.¹² And we have made public commitments to our customers that we will protect their privacy and their data.¹³

Similarly, our investments in Oath, telematics, and content delivery networks, for example, depend on the internet services and connections of other broadband providers and platforms. The great majority of worldwide internet users may not have direct access to our networks because they are outside our domestic ISP wireline footprint, do not subscribe to our wireless services, or are international. To reach these customers, our content and services depend on the ability to transit software platforms, search engines, and services of other ISPs and edge providers. Moreover, customers seek access to our content via third party search engines and social networks. We would be deeply concerned if any part of the internet ecosystem, be it an ISP, a platform, or social media, were to restrict the availability of our services to end users or prevent them from reaching the content they seek.

Based on our unique experiences in these different areas, we have insight into the changes in market dynamics and structures—and into the issues affecting consumers online—that may help inform the FTC’s analysis. Today, consumers interact directly with content providers, search engines, and social media. They have direct relationships with platforms and are on a first name basis with their home assistants as they ask “Alexa” and “OK Google” to reorder pet food, play music, or get a weather forecast. They use applications that link them directly to providers, like Uber or Netflix or Amazon. They search for content directly from Google, Siri, or Bing, or they click on content linked or promoted on social media. They access

¹² See Verizon Broadband Commitment, <https://www.verizon.com/about/our-company/verizon-broadband-commitment> (last visited Aug. 20, 2018) (“Verizon Broadband Commitment”); accord Craig Silliman, “Net Neutrality: A Path Forward,” *Verizon News* (Mar. 21, 2016), <https://www.verizon.com/about/news/net-neutrality-path-forward>.

¹³ See Protecting Consumer Privacy Online, January 27, 2017, *attached at Ex. A*.

information via apps downloaded from app stores. And they hop online anywhere and nearly everywhere, bouncing from public Wi-Fi in a city park, wireless coverage on their mobile phone, or their home Wi-Fi powered by cable or fiber or soon, a 5G connection, or by municipal broadband or a competitive provider. These entities that fuel consumers' ability to do this are multidimensional and complex. The governing regulations or frameworks necessary to protect consumers and promote competition must therefore be equally multidimensional and dynamic.

B. The Appropriate Legal and Regulatory Framework Should be Flexible and Responsive to Change

Based on how consumers today use the internet, we believe that any regulatory or governing framework needs to maintain flexibility, recognizing the ways in which the internet ecosystem may not align with more traditional competition analyses. It would be a mistake to import wholesale conclusions from decades-ago reports that assessed an earlier era driven by different concerns and experiences.¹⁴ Instead, the FTC should assess what the effect has been from prior regulation and enforcement—both at the FTC and the FCC—and determine whether it is now an appropriate time to readjust some of these prior conceptions to ensure that regulations and enforcement reflect the realities of today's internet. The FTC should ensure that its approach adequately protects consumer and competition, but also ensure that it does not inhibit innovation or competition based on unfounded or ill-informed concerns. In doing so, the FTC's hearings should acknowledge that this sphere is necessarily at least national in scope: the internet does not

¹⁴ Cf. FTC Staff Report, *Anticipating the 21st Century: Competition Policy in the New High-Tech, Global Marketplace* (May 1996), https://www.ftc.gov/system/files/documents/reports/anticipating-21st-century-competition-policy-new-high-tech-global-marketplace/gc_v1.pdf and https://www.ftc.gov/system/files/documents/reports/anticipating-21st-century-competition-policy-new-high-tech-global-marketplace/gc_v2.pdf (“1996 Competition Report”) (focusing largely on the ability to compete with foreign companies and eliminating hurdles to innovation); see also *2007 Broadband Report*.

stop at state lines and consumers routinely access content across the country and around the world. And thus, the FTC should be looking to apply a uniform national framework as it assesses competition and consumer protection in the digital ecosystem, as well as when it examines more specific issues such as privacy and non-discrimination by entities in this space.

But that framework should not be static. The internet and online entities have evolved quickly and that change continues to be exponential. Companies may compete in multiple parts of the internet: one corporate entity might power search, facilitate advertising, develop operating systems, and serve as an ISP; another might provide content, support home assistants, and enable retail; and a third might offer devices, content, and search functions. A framework thus needs to be both effective and flexible enough so entities may participate in multiple ways. And it should recognize that even as consumers interact with companies in many different ways on the internet, they expect reasonable and consistent protections online. Further, while keeping its focus on consumers, such a framework should acknowledge the need for new competitors to be able to enter the market. Harm to competition and competitive processes can lead to harm to consumers by eventually limiting their ability to access new entrants and innovations, or by limiting their ability to adopt new technologies and services.

C. Consumer Welfare Should Be the Lodestar of FTC Analysis

As consumers drive market changes, their welfare ought to be central to the FTC's ongoing examination of this space. The consumer welfare standard—when clearly defined—not only best encapsulates the goals of antitrust but should be the lodestar that helps guide effective competition policy and enforcement approaches to complex and dynamic antitrust issues, including those raised by the internet ecosystem.¹⁵

¹⁵ How we define the goals and antitrust standard shapes what is a “competitive harm” and thus what is a credible antitrust action. It also determines what type of evidentiary support is

1. Recent Challenges to the Efficacy of Antitrust Tools and Enforcement Nonetheless Spotlights that the Consumer Welfare Standard Best Protects Consumers

For the past two years, antitrust has been headline news, being called on to remedy—or blamed for—everything from income inequality to election interference. The resulting robust debate across the ideological spectrum¹⁶ has once again engaged with questions around antitrust’s goals: is antitrust limited to measurable economic effects, should it be based on examination of total welfare (consumer and producer welfare effects) or limited to consumer welfare, should it extend to protection of competitors and choice (consumer choice standard) and/or noneconomic factors such as the environment, free speech, and democracy (multiple goals or public interest standards), or does it fall somewhere in between? These questions are not new, but they were not a driving force during the 1995 Pitofsky hearings.¹⁷ Yet while a vocal minority argues for an overhaul or at least an extension of antitrust goals to incorporate political and social factors, the vast majority of antitrust practitioners, academics, and enforcers agree that the consumer welfare standard, limited to economic competition-related factors, properly bounds antitrust and makes it workable, predictable and effective. We agree.

needed to bring a claim and how that evidence—be it econometric analysis of price, marketing studies of consumer preferences, testimony of competitors, efficiency analyses, or other—is weighted.

¹⁶ Conferences debating the goals of antitrust, including the role of antitrust have proliferated across ideologically disparate groups, including, *e.g.*, 66th ABA Antitrust Spring Meeting (April 17-19, 2018) (sessions include “Antitrust in an Age of Populism,” “Big Is Bad – Or Is It,” and “The Consumer Welfare Standard”); Capitol Forum’s 4th Annual Tech, Media, & Telecom Competition Conference (Dec. 2017); Roosevelt Institute Market Power Rising (Sept. 25, 2017) (“Antitrust in the Tech Sector”); Stigler Conference, “Digital Platforms and Competition” (April 19-20, 2018); George Mason 21st Annual Antitrust Symposium, “The Consumer Welfare Standard: From *The Antitrust Paradox* to Hipster Antitrust” (Feb. 16, 2018).

¹⁷ *1996 Competition Report* at 2 (“Notwithstanding this changing marketplace -- and in striking contrast to the more ideological debates of the 1980s -- no one questioned the core elements of competition or consumer protection law or policy.”).

2. Consumer Welfare Should Be Clearly Defined to Focus on the Consumer, Competitive Process and Reaching Both Price and Nonprice Factors

But even near universal¹⁸ embrace of consumer welfare has not led to clarity on what this standard entails. Indeed, different factions across the ideological spectrum have claimed the consumer welfare standard as their own but imbue it with categorically dissonant meanings. Some consumer welfare proponents, for example, marked by a focus on restraining enforcement to avoid overenforcement and its accompanying chilling effect, define consumer welfare as humbly limited to measurable, economic based assessments.¹⁹ Others argue that consumer welfare focuses not just on the impact on consumers, but also takes into account the effect on producers, in ways that lean more towards a “total welfare” standard (incorporating effects on suppliers, for example).²⁰ Some embrace consumer welfare because it incorporates competitive

¹⁸ Even the European Commission has embraced consumer welfare, despite its different philosophical and economic approach and history. *E.g.*, Neelie Kroes, European Competition Commissioner, “European Competition Policy – Delivering Better Markets and Better Choices” European Consumer and Competition Day (London Sept. 5, 2005), http://europa.eu/rapid/press-release_SPEECH-05-512_en.pdf (“Consumer welfare is now well established as the standard the Commission applies when assessing mergers and infringements of the Treaty rules on cartels and monopolies. Our aim is simple: to protect competition in the market as a means of enhancing consumer welfare and ensuring an efficient allocation of resources.”); Johannes Laitenberger, Director General for Competition, “EU Competition Law in Innovation and Digital Markets: Fairness and the Consumer Welfare Perspective,” MLex/Hogan Lovells event (Oct 10, 2017), http://ec.europa.eu/competition/speeches/text/sp2017_15_en.pdf (“A merely static, short-term, price-centric perspective will fail to deliver the benefits of competition. **The consumer welfare standard to which we are bound** also includes a dynamic perspective, looking also at longer-term effects, potential effects, and counterfactual effects.” (emphasis added)).

¹⁹ Joshua D. Wright & Douglas H. Ginsberg, *Welfare Trumps Choice*, 81 Fordham L. Rev. 2405 (2013).

²⁰ *See, e.g.*, Senate Judiciary Subcommittee on Antitrust, Consumer Protection and Consumer Rights, “The Consumer Welfare Standard in Antitrust: Outdated, or a Harbor in a Sea of Doubt?” (115th Cong. Dec. 13, 2017), statement by Prof. Carl Shapiro, <https://www.judiciary.senate.gov/imo/media/doc/12-13-17%20Shapiro%20Testimony.pdf>; Carl Shapiro, *Antitrust in a Time of Populism* (Oct. 24, 2017), <http://faculty.haas.berkeley.edu/shapiro/antitrustpopulism.pdf>.

process concerns and factors such as innovation and quality but eschews political and noneconomic factors.²¹ Likewise, prominent antitrust progressives have concluded that antitrust is best served by the consumer welfare standard – which they assert includes nonprice factors such as quality, output, and innovation.²²

3. Clearly Defining the Consumer Welfare Standard Will Help Guide the FTC’s Hearings Agenda on Other Key Competition Issues

Resolving what the consumer welfare standard means will allow the standard to fulfill its lynchpin role to key competition issues raised at the FTC’s hearings, including, for example, thorny issues involving market definition and theories of harm in digital markets.²³ Such a clear standard should incorporate innovation, to make clear the role of innovation markets and innovation theories of harm as robust tools within the enforcer toolkit. Further, by confirming that the ultimate goal is to protect consumers by promoting competition, the FTC would properly relegate the role of market definition to its function as a proxy for determining antitrust harm – and not an impediment to proving a case in digital markets with multiple dimensions and ill-defined lines. These changes would allow the FTC to better address rapidly shifting, expanding, and/or changing markets.²⁴ A clear definition of consumer welfare may prevent shifting markets

²¹ A. Douglas Melamed & Nicolas Petit, “Before ‘After Consumer Welfare’: A Response to Professor Wu,” Competition Policy International (July 2018), <https://www.competitionpolicyinternational.com/wp-content/uploads/2018/07/North-America-Column-July-Full.pdf>.

²² *See, e.g.*, Senate Judiciary Subcommittee on Antitrust, Consumer Protection and Consumer Rights, “The Consumer Welfare Standard in Antitrust: Outdated, or a Harbor in a Sea of Doubt?” (115th Cong. Dec. 13, 2017), statement by Dr. Diana Moss, <https://www.judiciary.senate.gov/imo/media/doc/12-13-17%20Moss%20Testimony.pdf>.

²³ Definitional certainty also helps parse what falls within the purview of antitrust, and where other competition tools aside from antitrust enforcement are more aptly suited to addressing competition concerns – or what simply are not competition issues in the first place.

²⁴ For example, the digital advertising ecosystem has morphed over time from what was once very much like an electronic version of the traditional newspaper advertising model (content publishers seeking to sell content to advertisers), to now a mashup where user audiences and

from becoming an impediment to effective antitrust enforcement when clearly anticompetitive behavior harms consumer welfare by increasing prices (even if those prices are nonmonetary) and degrading quality.²⁵ This greater clarity on the role of market definition, especially in cases dealing with markets that do not fit cleanly within the horizontal or vertical labels, but involve dynamics that spill into adjacent markets or are on the cusp of coalescing, would provide greater predictability.

As previously noted, Verizon is leaning heavily into development of 5G, working to help usher in what we believe will be the Fourth Industrial Revolution.²⁶ Densification is key to successful 5G deployment, which requires massive infrastructure coverage. Buyer side collaborations that allow cost reductions and thus greater deployment and coverage provide a way to expedite the requisite densification. Yet the ambiguity arising from uncertainty about whether consumer welfare focuses on consumers (who would clearly benefit from the benefit of 5G and potentially lower costs) or if it will focus on supplier middle men who may be negatively affected by collaborations among buyers chills collaborative efforts. By clarifying that the

views are sold, and publisher ad servers to supply side platforms, ad networks, ad exchanges, demand side platforms, data management platforms and advertiser ad servers all are part of the mix. Companies that once owned just a portion of this advertising technology ecosystem now own all parts and dominate the ad tech pipeline through acquisitions, bundling, or tying different parts of the ecosystem, requiring exclusivity, favoring their own ad tech products and services, and degrading interoperability.

²⁵ The 2010 Horizontal Merger Guidelines seem aligned with this approach in moving away from market definition as a necessity, making clear instead its role as a proxy for what actually matters – competitive harm. *See Horizontal Merger Guidelines of the United States Department of Justice and the Federal Trade Commission* (Aug. 2010), https://www.ftc.gov/system/files/documents/public_statements/804291/100819hmg.pdf.

²⁶ Verizon, “To the future, faster: 5G news,” <https://www.verizon.com/about/our-company/5g>.

consumer welfare standard focuses on consumers, and is not focused on total welfare, the FTC can provide predictability and raise incentives for companies to innovate.

Greater clarity on the role of nonprice harms and consumer surplus also will provide guidance on how leverage and innovation theories of harm can maximize antitrust goals. For example, in the content area, Verizon has been blocked from providing innovative products such as skinny bundles to consumers by the Gordian knot of vertical restraints imposed by content owners through MFNs, bundling, minimum penetration requirements, and content consolidation.

Clarity on the consumer welfare standard also has the potential to help address nascent challenges and opportunities raised by technologies such as blockchain, artificial intelligence and big data, and algorithms. These technologies are not all entirely new, but they combine concepts such as accessibility, network effects, interoperability, portability, data security, and autonomy in challenging and different ways that create new complexities and require the FTC and other agencies to examine their role as antitrust versus privacy and consumer protection enforcers. The FTC's mandate goes beyond pure antitrust to prevent deceptive and unfair business practices, and enhancing informed consumer choice and public understanding of the competitive process.²⁷ Yet to the extent that the internet ecosystem presents antitrust-adjacent competition issues—that is, issues that do not fall within the purview of antitrust because they do not go to anticompetitively attaining, increasing or wielding market power but are the result of competition distortions and affect consumers—the FTC with its economic and technical expertise seems best suited to use authorized regulatory and enforcement powers.

²⁷ See “About the FTC,” <https://www.ftc.gov/about-ftc>.

II. An Appropriate and Strong Privacy Framework Is Critical Both to Consumers and to a Well-Functioning and Evolving Internet Ecosystem

The same consumer-focused approach discussed above in the antitrust context should also inform the FTC's ongoing efforts to protect consumer privacy on the internet. The FTC has long taken a uniform approach to safeguarding consumer privacy that applies to all participants in the Internet ecosystem. That system has included the core principles of transparency, customer choice, and data security. Going forward, consumers will continue to benefit most from a privacy regime that applies these principles uniformly to their data regardless of who has it. A consistent structure will avoid creating the consumer confusion, information fatigue, and regulatory uncertainty that would result if consumers are subjected to multiple and varying privacy regimes. The planned FTC hearings related to privacy can acknowledge the importance of applying principles uniformly, explore what specific principles should be applied, and consider how the FTC and other arms of the federal government could best implement these principles.

Verizon has adopted policies designed to implement these core principles throughout its businesses. Our practices involve (1) informing consumers of our practices, (2) giving customers choices about how their data is used based on the sensitivity of that data, and (3) protecting customer data.

Disclosure. Verizon prominently discloses its privacy practices to consumers in a way that is easy to understand. We inform customers about what information we collect, how it is used, and how customers can exercise their choices over certain uses of their data.

Customer Choice. Consistent with the FTC's guidance, Verizon believes customers should have meaningful choices. Verizon gives customers easy-to-understand privacy choices, including opt-in choices, based on the sensitivity of their personal data and how it will be used or disclosed. For example, Verizon's customers can choose to participate in various advertising and marketing programs—none of these involves the sale of individually identifiable information to advertisers or other third parties. Subscribers who choose to participate in these programs benefit by receiving advertising that is more relevant and useful to them; they may also receive other benefits, such as loyalty rewards

or other perks. And we inform customers who are not interested in participating in these programs that the choice is theirs and we provide them with easy-to-use tools to elect not to participate.

Protection of Data. Verizon uses a variety of technical, administrative and physical safeguards to protect customer information. These controls and practices are intended to prevent and detect improper access to and misuses of subscriber information, including incident response procedures that allow for rapid action to address security threats or events. Those procedures also allow us to deliver appropriate, timely and useful notices to customers that typically include information about further preventive or remedial measures they could take.

Our practices, consistent with FTC guidance and built on a framework emphasizing the importance of notice-and-choice, provide consumers with important privacy protections.

In recent years, however, new developments have sparked a discussion about whether the government should take a fresh look at privacy and data security. These new developments include information about how tech companies are sharing information with third parties (for example, Facebook and Cambridge Analytica). In addition, data breaches have become increasingly common that many don't even register with consumers anymore.

The legal landscape surrounding privacy also has changed significantly in recent years. Internationally, the European Union's General Data Protection Regulation went into effect in May, impacting companies that collect information from people while in Europe. And California has now passed the California Consumer Privacy Act, which imposes significantly new privacy requirements for the first time in the United States.²⁸

These changes have resulted in much discussion about the role of privacy regulation and whether more should be done at the federal level. The FTC should continue to play a critical role in these discussions and could significantly further them through its upcoming hearings.

²⁸ The California Consumer Privacy Act of 2018, Assembly Bill No. 375 (Approved June 28, 2018).

Throughout these hearings and as the FTC considers what standards should govern consumer privacy and data security and how those standards should be implemented, Verizon encourages the Commission to focus on the following principles:

- Consistency: All entities, regardless of industry sector, that collect information about consumers should be subject to the same requirements. One set of rules or guidelines that governs the entire internet ecosystem will ensure consistent protections for consumers.²⁹ These rules should continue to be enforced by the FTC as the expert federal agency on consumer privacy and data protection.
- Federal Framework: Because the internet doesn't distinguish between state borders, there should be a federal framework governing privacy; it should not be governed by variable state-by-state rules. A state-by-state approach to privacy and data security results in inconsistencies with the federal privacy framework and creates unworkable requirements for data. The FTC, particularly given its broad jurisdictional reach, therefore must be the primary agency in implementing and enforcing any privacy and data security framework moving forward.
- Flexibility: Statutory and regulatory requirements governing ever-evolving technology need to be flexible so that they don't become quickly outdated. Principles-based legislation and regulation, rather than prescriptive requirements, can achieve that flexibility. The overall framework should be informed by the principle that the level of sensitivity of the personal information will dictate the corresponding protections. And the FTC should continue to have a role in implementing and providing guidance on

²⁹ Well-established and effective privacy regimes governing particular industries with specific consumer needs, such as HIPAA and GLBA, should continue to apply as well.

privacy and data security requirements, such as defining “personal information” and “sensitive personal information.”

- Transparency: Companies must provide clear and easy to understand notice about their practices with respect to collection, use and sharing of personal information.
- Choice: Companies must provide consumers with the opportunity to opt in to the collection, use, and sharing of sensitive personal information and to opt out of the collection, use, and sharing of other personal information. Exceptions should be in place for collection, use, and sharing for operational and other purposes (*e.g.*, legal process).
- Data security and breach notification: Companies must put in place reasonable security measures to protect personal information and should notify consumers in appropriate circumstances when breaches occur.
- Safe Harbor programs: An entity should be deemed to be in compliance with the law if the entity participates in and is in compliance with a Safe Harbor program that meets or exceeds the requirements of the law.
- Enforcement: The enforcement regime for privacy should be two-fold: a) FTC enforcement with civil penalties (subject to a cap); and (b) State attorneys general enforcement of federal law. The FTC has a long history of bringing enforcement actions against companies for privacy and data security violations and these actions have effectively and efficiently ensure consumers are protected throughout the ecosystem. The FTC is—and should continue to be—the expert agency on these issues.

A privacy structure that reflects these fundamental principles, whether implemented by the FTC through enforcement action and informal policy guidance or formally adopted through legislation in Congress, will protect consumers, both now and in the future. At its planned

hearings, the FTC should explore the benefits of Congress enacting baseline federal privacy legislation consistent with these principles as well as how its own enforcement actions and/or policy guidance, consistent with these principles, can promote consumer privacy and data security.

III. Consumer Perspectives and the Evolving Internet Ecosystem Should Guide the FTC's Analysis of Internet Openness and Fairness

Verizon supports the open internet. And we've committed to protecting it by ensuring consumers can access the content they want when and how they choose.³⁰ But the internet is not just broadband access, and, like other parts of the internet ecosystem, the definition of net neutrality has evolved over time. While the FCC has always considered its focus to be mass-market broadband internet access—and those services were the subject of its short-lived Title II-based rules—consumers and advocates today often consider all parts of the internet ripe for protection from unnecessary discrimination or from anticompetitive or anticonsumer practices. Unlike the FCC, the FTC has broad jurisdiction over this space, along with its existing robust process to enforce issues relating to consumer welfare. Thus, as it continues to review these issues, the FTC should look to consumer expectations to guide how it regulates online service providers. Similarly, because of the rise in relative power between online entities and internet service providers, the FTC should be careful not to prescribe or create regulatory disparities, but should instead look to guide even-handed treatment.

A. The FTC's Framework Should Broadly Reflect Consumer Online Experiences

First, as discussed above, consumers today interact independently with providers across the internet ecosystem, many of which shape the consumer experience online and have access to

³⁰ See Verizon Broadband Commitment.

critical data about consumers or which help guide what content they find in searches or come across in social media. Consumers have independent relationships with content providers, with devices and operating systems, and with social media. And those relationships may frame how they view or access content or services. For example, an algorithm on a search engine or social media can determine whether a particular piece of content might be disseminated at all; an application store can decide if a new app will be easily reachable by the public. These issues—and the prevalence of these platforms and services—have informed recent discussion about how these entities promote or distribute certain content, and whether other information should be restricted or removed.³¹ The prominence and growing influence of many online platforms has fueled discussion of possible “platform regulation,” recognizing that an approach limited just to internet service providers may not adequately address all of the kinds of issues which can emerge.³² At the same time, the broadband internet access market has become more competitive, with consumers having the ready ability to switch between multiple providers.³³

³¹ See, e.g., “Gatekeepers or Censors? How Tech Manages Online Speech,” *The New York Times* (Aug. 7, 2018), <https://www.nytimes.com/2018/08/07/technology/tech-companies-online-speech.html>; Megan Keller, Dem senator defends social media platforms deleting content,” *The Hill* (Aug. 7, 2018 1:22 PM), <http://thehill.com/policy/technology/400740-dem-senator-defends-social-media-deleting-content-not-the-same-as>.

³² See, e.g., Harold Feld, “Platform Regulation Part I: Why Platform Regulation is Both Necessary and Hard,” *Public Knowledge Blog* (July 17, 2018), <https://www.publicknowledge.org/news-blog/blogs/why-platform-regulation-is-both-necessary-and-hard>.

³³ See Industry Analysis and Technology Division, *Internet Access Services: Status as of December 31, 2016* (FCC Wireline Competition Bureau, Feb. 2018), <https://docs.fcc.gov/public/attachments/DOC-349074A1.pdf> (showing that more than 90% of census blocks that contain housing units have three or more fixed broadband service providers offering service in that block); *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Twentieth Report, 32 FCC Rcd 8968, at Appendix III: Table III.D.iv (2017) (96.6% of the U.S. population is served by three or more LTE providers; 88.6% of U.S. population is served by four or more). Other estimates are even higher. See, e.g., estimates by CTIA that indicate that more than 98 percent of the U.S. population is covered by three or more wireless

The FTC is well-positioned to address these issues, as with privacy issues. Indeed, many of these issues sound in competition and consumer protection concerns, which are at the core of the FTC’s competence and mission. While there is every reason to believe that the FTC can and will protect consumers and competition in the context of the digital economy, there are substantial benefits to resolving them through federal legislation which would settle these issues once and for all and give certainty to providers and consumers alike. Such an approach would be most consistent with the federal policy of promoting broadband development through deregulation at *all* levels of government.³⁴ Federal legislation could adopt rules that reflect the existing competition and dynamism evident in today’s broadband marketplace, and could recognize that, far from targeting just internet service providers, there are multiple different providers, networks, and applications that make up the internet and affect the consumer experience online. Further, uniform national rules would remove the specter of unmanageable state-by-state regulation currently being threatened, as well as eliminate the current risk of ping-ponging regulatory regimes that create problematic uncertainty for both consumers and industry.

But in the absence of Congressional action, the FTC can and should recognize that it has jurisdiction to resolve these issues fairly and consistently. The FTC’s review here should be focused on the same consumer-driven approach as discussed above, looking to how consumers actually use and access information online and how competition in this space actually affects

providers and more than 95 percent of population is covered by three or more LTE-based wireless providers. CTIA, “Wireless Snapshot 2017” <https://api.ctia.org/docs/default-source/default-document-library/ctia-wireless-snapshot.pdf>.

³⁴ See, e.g., 47 U.S.C. §§ 230, 1302 (favoring deregulation and expansion of broadband services); *City of New York v. FCC*, 486 U.S. 57 (1988) (upholding FCC preemption of varying state and local laws relating to cable systems that could impede provision of the service, increase consumer costs, and impede responses to technological changes); *Restoring Internet Freedom Order*.

consumers. Since consumers today regularly interact with all forms of online service providers—including not just broadband access providers, but also platforms, search engines, social media, and operating systems—all of these entities should be considered evenhandedly.

In contemplating either prescriptive rules or post-facto enforcement regimes, the FTC's approach should therefore be sufficiently broad to reflect consumers' actual practices and behaviors online. And its analysis should include real-world consumers' activities both in how they seek and access content, and in how they interact with platforms, content companies, operating systems, retail, and social media, in addition to internet service providers. As part of this review, the FTC should carefully consider the appropriate approach to ensuring that the internet remains open beyond the traditional limited focus on internet service providers created by the FCC's more limited jurisdiction.

To be sure, in forming its regulatory framework, the FTC's analysis should be informed by the effects of prior regulation, which was both over- and under-inclusive in scope. As the FCC recently determined, undue regulation can stall innovation and investment by limiting or removing incentives to develop new technologies.³⁵ Slowing development of those new services—particularly with 5G on the horizon—will have real world effects. For example, with a new form of network architecture, 5G technology will enable use cases that include more widespread use of autonomous vehicles, remote medical treatment or surgery, or new avenues for the Internet of Things. But restrictive regulations or the possibility of rate regulation could limit those advances by diminishing incentives for companies to invest or innovate.³⁶

³⁵ *Restoring Internet Freedom Order*, ¶¶ 88-108.

³⁶ *See Nat'l Ass'n of Telecomms. Officers and Advisors v. FCC*, 862 F.3d 18, 25 (2017) (“Rate regulation of a firm in a competitive market harms consumers: Prices set below the competitive level result in diminished quality, while prices set above the competitive level drive some consumers to a less preferred alternative.”citing 1 Alfred E. Kahn, *The*

B. The FTC Should Not Adopt Prescriptive Rules That Could Quickly Become Outdated

The FTC may find that there are substantial benefits in an ex post facto approach, rather than technology specific rules that may quickly become outdated. When assessing appropriate standards to apply, the FTC should acknowledge that different types of services and platforms may be more or less dominant, and/or act in ways that are more or less likely to pose a threat to consumers or competition.

For example, a reasonable regulatory framework could recognize that companies like internet service providers today face specific competitive incentives that deter bad behavior. For example, Verizon faces competition nearly everywhere we offer broadband access services; indeed, for wireless services, multiple providers compete head-to-head nearly everywhere that consumers live. As providers are eager to grow their market share and respond to consumer demands, they compete on issues like speed and network quality—which are publicly evaluated in multiple publicly sourced or independently analyzed studies that rate relative performance.³⁷

The prominence of public testing and disclosure of network performance and consumer satisfaction—as well as an energetic and careful public that itself polices any claims of misbehavior—means that these providers have built-in incentives to protect consumers. Indeed,

Economics of Regulation: Principles and Institutions 21, 66-67 (1970)). See also Andres V. Lerner and Janusz A. Ordover, An Economic Analysis of Title II Regulation of Broadband Internet Access Providers, at 9-11, *attached at Ex. A, Comments of Verizon, Restoring Internet Freedom*, WC Docket No. 17-108 (FCC July 17, 2017).

³⁷ See, e.g., Rootmetrics, “Mobile performance in the US part 1: performance across the entire US - 1H 2018” (July 26, 2018), <http://rootmetrics.com/en-US/content/mobile-performance-in-the-us-part-1-performance-across-the-entire-us-1h> (concluding that “Verizon’s performance in our national testing remained outstanding and far stronger than that of any other carrier”); Press Release, “Wireless Network Quality Shows Overall Improvement, J.D. Power Finds” (July 19, 2018), <http://www.jdpower.com/business/press-releases/2018-us-wireless-network-quality-study-vol-2> (“Verizon Wireless ranks highest in all six regions in the study”).

internet service providers have publicly committed to their support for the open internet.³⁸ For example, Verizon has committed that in order to enable our consumer broadband customers to take advantage of all the internet has to offer, we will not block, throttle, or slow down any internet content based on its source or content, nor we will accept payments from any company to deliver its traffic faster or sooner than other traffic on our consumer broadband service, or deliver our affiliates' internet traffic faster or sooner than third parties.³⁹ Plain and simple, we commit that we “will not prioritize traffic in a way that harms competition or consumers.”⁴⁰

The FTC already has the ability to police these enforceable commitments. The FTC Act authorizes the FTC to prevent businesses from “using unfair methods of competition in or affecting commerce,” as well as “unfair or deceptive acts or practices in or affecting commerce.”⁴¹ FTC guidance further provides that unfair competition includes acts and practices “that contravene the spirit of the antitrust laws and those that, if allowed to mature or complete, could violate” those laws.⁴² To qualify as “unfair” under both antitrust and consumer protection laws, an act or practice must at a minimum “caus[e] or [be] likely to cause substantial injury to consumers” that is neither “reasonably avoidable by consumers themselves” nor “outweighed by countervailing benefits to consumers or to competition.”⁴³ If the FTC determines that an unfair

³⁸ See Verizon Broadband Commitment.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ 15 U.S.C. § 45(a)(2).

⁴² FTC, *Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act* at 1 (2015), https://www.ftc.gov/system/files/documents/public_statements/735201/150813section5enforcement.pdf; see also *FTC v. Ind. Fed’n of Dentists*, 476 U.S. 447, 454 (1986) (stating that the “standard of ‘unfairness’” encompasses “practices that the [FTC] determines are against public policy”).

⁴³ 15 U.S.C. § 45(n).

practice is prevalent, the FTC may address it using a rulemaking proceeding;⁴⁴ the FTC may also initiate an enforcement action against the alleged offender and seek an adjudication that a specific practice is unfair.⁴⁵ The FTC can also use its Section 5 authority to enforce against deceptive business representations if it determines that such representations (or omissions) are material and likely to mislead consumers acting reasonably under the circumstances.⁴⁶ If broadband service providers' conduct falls outside this jurisdiction—that is, if their actions cannot be described as anticompetitive, unfair, or deceptive—then the conduct should not be banned in the first place. Indeed, the government should be *encouraging* broadband providers to offer pro-competitive and innovative services on fair terms and in a transparent, truthful manner.

Moreover, there is substantial evidence that the competitive nature of broadband internet access has already created an atmosphere where violations of open internet principles, at least by internet service providers, are relatively rare, perhaps in large part because both competition and a vibrant and engaged public carefully police any potential infractions. In that context, there is little need for the FTC to implement independent testing or complaint by complaint resolution – which itself might be duplicative or even technically near impossible.⁴⁷ Instead, the FTC should

⁴⁴ *Id.* § 57a(b)(3).

⁴⁵ *See id.* § 45(b) (administrative enforcement); *id.* § 53(b) (judicial enforcement).

⁴⁶ *See* FTC Policy Statement on Deception, Letter from James C. Miller III, Chairman, Federal Trade Commission, to Representative John D. Dingell, Chairman, House Committee on Energy and Commerce (Oct. 14, 1983), *appended to* Cliffdale Assocs., Inc., 103 F.T.C. 174 (1984).

⁴⁷ Although providers work to ensure the best possible service, it is still possible that an individual customer might suffer an interruption in service or disruption in traffic from service outages, weather conditions, congestion, third party disruptions, or other means – none of which are necessarily part of an anti-competitive or consumer harming action by the provider. The FCC today has robust outage reporting and customer complaint systems to address individual concerns with service quality or conditions which already receive more than 330,000 annual complaints. *See* Consumer Complaints by Category 2017YTD, <https://opendata.fcc.gov/Consumer/CGB-Consumer-Complaints-by-Category->

look to the already existent public reporting or to trends in consumer complaints to the extent they indicate large scale patterns showing substantial shifts in online service provider behaviors or substantial, unmitigated, or unaddressed violations across the internet.

CONCLUSION

Given the rising importance of consumer issues, the FTC should use these hearings as an opportunity to confirm its consumer welfare standard. The Commission should also ensure that any regulatory framework it enacts reflects the actual ways in which consumers use the online ecosystem and acknowledges both existing and potential competitive realities in this space. Therefore, and for the reasons stated above, Verizon supports the FTC's initiative in considering comments and holding these hearings, and looks forward to engaging further with the Commission on these important issues.

Respectfully submitted,

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[2017YTD/kvap-rzqf](#) (last visited Aug. 14, 2018). Given the FCC-FTC Memorandum of Understanding, there is no reason for the FTC to duplicate this effort or attempt to re-create it to assess the details of possible disruptions in internet service. *See Restoring Internet Freedom FCC-FTC Memorandum of Understanding* (FTC Dec. 14, 2017), https://www.ftc.gov/system/files/documents/cooperation_agreements/fcc_fcc_mou_internet_freedom_order_1214_final_0.pdf.

EXHIBIT A

Protecting Consumer Privacy Online

January 27, 2017

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January 27, 2017

January 27, 2017
For Immediate Release

Protecting Consumer Privacy Online
Internet Companies Reaffirm Consumer Privacy Principles
As FCC Reviews Flawed Wheeler Era Broadband Rules

Today, associations representing virtually all of the leading US internet service providers filed a petition asking the FCC to stay unnecessarily restrictive and destructive broadband privacy rules recently adopted by the FCC, while at the same time releasing detailed and comprehensive principles reiterating ISPs' commitment to protecting their customers' privacy online.

These principles include specific policies on transparency, choice, security, and notifications in the case of a data breach. They reaffirm and restate the ISPs' longstanding, pro-consumer privacy practices based on the highly respected FTC framework that has protected internet users for years and provided the flexibility necessary to innovate new product solutions to enhance consumers' online experiences.

These effective principles reflect consumer expectation in stark contrast to the flawed Wheeler privacy rules, which would create an inconsistent and confusing patchwork that will confuse consumers and weaken data protection online. Data submitted to the FCC shows that 94% of internet users believe all companies collecting or using information online should be governed by the same set of rules.

The stay filed by CTIA, NCTA – The Internet & Television Association, USTelecom, ACA, CTA, CCA, ITTA, NTCA – The Rural Broadband Association, WISPA, and WTA asks the FCC to halt these harmful rules while it resolves multiple pending motions for their reconsideration. If granted, the combination of the ISPs' privacy principles and applicable laws would protect consumers' privacy without subjecting them to flawed and confusing regulations that would undermine the safe and consistent treatment of their data online.

For over twenty years, ISPs have protected their consumers' data with the strongest pro-consumer policies in the internet ecosystem. ISPs know the success of any digital business depends on earning their customers' trust on privacy. The following companies and associations affirm these principles: Altice USA, American Cable Association, AT&T, Charter Communications, Citizens Telephone and Cablevision, Comcast, Cox Communications, CTIA, Dickey Rural Networks, Inland Telephone Company d/b/a Inland Networks, ITTA – The Voice of Mid-Sized Communications Companies, NCTA – the Internet & Television Association, Northeast Louisiana Telephone Co., Inc. (NortheastTel), NTCA – The Rural Broadband Association, SCTelcom, T-Mobile, USTelecom, Verizon, VTX1 Companies, Wheat State Telephone, Inc., Wireless Internet Service Providers Association, WTA – Advocates for Rural Broadband.

The following statements can be attributed to each Association accordingly:

Tom Power, Senior Vice President and General Counsel, CTIA: “Wireless carriers are committed to respecting consumer privacy, and today they have enshrined that commitment by embracing a set of core privacy principles. We support a regulatory regime that reflects these principles and provides a uniform privacy and data security framework for all. Unfortunately, the FCC has adopted an uneven regulatory regime that picks winners and losers and that will confuse consumers who quite reasonably

expect all companies to be governed by the same set of rules. Investment in next-generation 5G services require more regulatory clarity on broadband privacy, not less - a grant of this petition would be an important initial step in the right direction and allow time for careful review by both Congress and the FCC.”

Genevieve Morelli, President, ITTA: “ITTA’s member companies remain fully committed to safeguarding consumer privacy. Today’s petition asks the FCC to halt implementation of rules that, while well-intentioned, exceed the FCC’s statutory authority and will only serve to confuse consumers, in turn undermining their ability to exercise choice. We are confident that when the FCC reexamines these rules, it will address their unequal treatment of ISPs and will apply the same standards to all entities in the Internet ecosystem, thereby benefitting all consumers.”

Rick Chessen, Senior Vice President of Law & Regulatory Policy, NCTA: “Cable ISPs know well the trust that consumers place in them to protect their personal information. For years, they have met or exceeded the standards for privacy that were established by the Federal Trade Commission and were applicable throughout the Internet ecosystem. While these pro-privacy practices will continue, we look forward to swift action by the new FCC to reverse its recent decision that imposes new regulatory costs uniquely on ISPs and denies consumers the benefit of a consistent and effective approach to privacy protection.”

Jon Banks, Senior Vice President of Law & Policy, USTelecom: “USTelecom’s broadband provider members understand that consumer privacy is a core value. Our filing today simply asks the FCC to return to the FTC’s time-tested privacy framework that provides transparency, consumer choice and data security assurances. For many years, that framework has successfully protected consumer privacy and nurtured the growth of innovative services. We hope the FCC acts quickly so that consumers have a single framework for privacy and innovation across the Internet.”

###

ISP Privacy Principles

ISPs understand the trust our customers place in us, and we are committed to protecting our customers' privacy and safeguarding their information. For 20 years, we have implemented policies and practices that are consistent with the FTC's widely respected and effective privacy framework and other federal and state privacy laws. This framework helped drive the success of today's Internet ecosystem by balancing consumer protection with the flexibility necessary to innovate. We understand the importance of maintaining our customers' trust. That is why we will continue to provide consumer privacy protections, while at the same time meeting consumers' expectations for innovative new product solutions to enhance their online experiences. Regardless of the legal status of the FCC's broadband privacy rules, we remain committed to protecting our customers' privacy and safeguarding their information because we value their trust. As policymakers evaluate the issues, we will maintain consumer protections that include the following:

- **Transparency.** ISPs will continue to provide their broadband customers with a clear, comprehensible, accurate, and continuously available privacy notice that describes the customer information we collect, how we will use that information, and when we will share that information with third parties.
- **Consumer Choice.** ISPs will continue to give broadband customers easy-to-understand privacy choices based on the sensitivity of their personal data and how it will be used or disclosed, consistent with the FTC's privacy framework. In particular, ISPs will continue to: (i) follow the FTC's guidance regarding opt-in consent for the use and sharing of sensitive information as defined by the FTC; (ii) offer an opt-out choice to use non-sensitive customer information for personalized third-party marketing; and (iii) rely on implied consent to use customer information in activities like service fulfillment and support, fraud prevention, market research, product development, network management and security, compliance with law, and first-party marketing. This is the same flexible choice approach used across the Internet ecosystem and is very familiar to consumers.
- **Data Security.** ISPs will continue to take reasonable measures to protect customer information we collect from unauthorized use, disclosure, or access. Consistent with the FTC's framework, precedent, and guidance, these measures will take into account the nature and scope of the ISP's activities, the sensitivity of the data, the size of the ISP, and technical feasibility.
- **Data Breach Notifications.** ISPs will continue to notify consumers of data breaches as appropriate, including complying with all applicable state data breach laws, which contain robust requirements to notify affected customers, regulators, law enforcement, and others, without unreasonable delay, when an unauthorized person acquires the customers' sensitive personal information as defined in these laws.

These principles are consistent with the FTC's privacy framework, which has proved to be a successful privacy regime for many years and which continues to apply to non-ISPs, including social media

networks, operating systems, search engines, browsers, and other edge providers that collect and use the same online data as ISPs. That framework has protected consumers' privacy while fostering unprecedented investment and innovation. The principles are also consistent with the FCC's May 2015 [Enforcement Advisory](#), which applied to ISPs for almost two years while the FCC's broadband privacy rules were being considered.

The above principles, as well as ISPs' continued compliance with various federal and state privacy laws, will protect consumers' privacy, while also encouraging continued investment, innovation, and competition in the Internet ecosystem.

Altice USA
American Cable Association
AT&T
Charter Communications
Citizens Telephone and Cablevision
Comcast
Cox Communications
CTIA
Dickey Rural Networks
Inland Telephone Company d/b/a Inland Networks
ITTA – The Voice of Mid-Sized Communications Companies
NCTA – The Internet & Television Association
Northeast Louisiana Telephone Co., Inc. (NortheastTel)
NTCA – The Rural Broadband Association
SCTelcom
T-Mobile
USTelecom
Verizon
VTX1 Companies
Wheat State Telephone, Inc.
Wireless Internet Service Providers Association
WTA – Advocates for Rural Broadband