



September 28, 2021

The Honorable Maria Cantwell
Chair
U.S. Senate Committee on Commerce,
Science, and Transportation
512 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Roger Wicker
Ranking Member
U.S. Senate Committee on Commerce,
Science, and Transportation
512 Dirksen Senate Office Building
Washington, DC 20510

RE: Hearing on “Protecting Consumer Privacy” (September 29, 2021)

Dear Chair Cantwell and Ranking Member Wicker:

The Main Street Privacy Coalition (MSPC), a coalition of 19 national trade associations representing more than a million American businesses,¹ appreciates your focus on the need for federal data privacy protections and offers this statement for the hearing record. MSPC is comprised of a broad array of national trade associations representing businesses that line America’s Main Streets. From retailers to REALTORS™, hotels to home builders, grocery stores to restaurants, gas stations to travel plazas, and self-storage to convenience stores, MSPC member companies interact with consumers day in and day out. Our members’ businesses can be found in every town, city and state in our nation, providing jobs, supporting our economy and serving Americans as a vital part of their communities.

Collectively, the industries that MSPC member associations represent directly employ nearly 34 million Americans and constitute over one-fifth of the U.S. economy by contributing \$4.5 trillion (or 21.8%) to the U.S. gross domestic product (GDP). Our success depends on maintaining trusted relationships with our customers and clients: trust that the goods and services we provide are high quality and offered at competitive prices; and trust that the information customers provide to us is kept secure and used responsibly. For these reasons, our associations are actively engaged in the discussions surrounding data privacy and continue to work together to support Congress’s enactment of a comprehensive and uniform federal data privacy law.

MSPC is dedicated to the enactment of a federal data privacy law that creates privacy obligations for all businesses handling consumers’ personal information, and we support the Committee’s efforts to bring greater attention to the need for a such a law. We strongly believe that the views of Main Street businesses should be considered on this issue given that Main Street represents the backbone of the United States economy. Main Street businesses, many of whom have remained open to continue to serve consumers during the COVID-19 pandemic, will bear the full burden of regulatory obligations under proposed privacy bills the committee may consider this Congress. In the past, bills considered in Congress largely exempted telecommunications companies and big tech service providers from similar obligations to protect consumer privacy. Further, despite the bipartisan desire to enact federal data privacy legislation to protect consumers comprehensively, much of the proposed legislation to date has focused on

¹ The Main Street Privacy Coalition website and member list may be accessed at: <https://mainstreetprivacy.com>.

requiring Main Street businesses to protect consumers' data but not financial institutions, data brokers and social media companies that routinely process more sensitive consumer information. MSPC therefore urges the Committee to hear from and work with all stakeholders to advance a federal data privacy bill that applies equivalent provisions to all businesses handling consumers' personal information.

Virtually every industry sector – whether consumer-facing or business-to-business – handles significant volumes of consumer information. To protect Americans comprehensively, federal data privacy legislation should ensure that all industry sectors are covered and that there are no privacy loopholes that leave consumers unprotected when their personal data is handled by any business. All of the companies involved in handling the chain of personal data should have legal obligations to protect it under a federal privacy law and honor consumers' privacy requests. We should not rely on private contracts to create those legal obligations between parties, particularly between businesses that vary greatly in size and bargaining power (i.e., Main Street businesses versus global service providers).

MSPC has been concerned with provisions in the privacy legislation the Committee has considered in the past that would exempt service providers and third parties from statutory obligations to honor consumer rights exercised to protect their privacy. These exemptions for service providers would be extended to businesses in the telecommunications industry and technology companies. There are more effective ways to protect Americans' privacy. For example, privacy bills could be drafted with the premise that each business handling consumers' personal data should have statutory requirements to do what it is able to do to protect the consumer privacy established in the legislation without making consumer-facing businesses responsible for privacy violations by businesses that serve them and that they cannot control, such as much larger service providers. Legislation that takes this approach would more effectively secure the consumer rights it establishes and treat industry sectors fairly by making them responsible for their own conduct.

Privacy responsibilities should not simply be shifted from one industry sector onto another – not only because that is an ineffective way to protect consumer information but also because it is manifestly unfair to businesses that bear the brunt of those burdens for what should be the other businesses' own obligations to the consumer. Because our members include small businesses, they know that all too often powerful businesses within the telecom and tech industry sectors may use their superior market position to shift what should be their responsibilities onto their clients, typically leaving Main Street businesses with outsized compliance burdens and costs. If this approach is taken by Congress, it will leave holes in consumer privacy rights because federal enforcement agencies will have no effective way to compel service providers or third parties to comply with the law. Moreover, Main Street businesses will lack the financial and legal resources to hold them accountable for privacy practices that harm their customers.

MSPC has additionally been concerned with the exemption for financial institutions and other entities subject to the Gramm Leach Bliley Act (GLBA) from the consumer privacy protections in federal legislation. GLBA, a law enacted in 1999 that is significantly outdated in its extremely narrow privacy protections, which do not provide anything close to the privacy protections that the Committee's previously considered legislation extends to consumers. For instance, GLBA requires that an entity sharing consumer financial data with unaffiliated third parties for marketing purposes provide an annual opt-out notice in writing, which most

consumers likely never read. GLBA does not, however, require any access, correction or deletion of consumers' financial data upon request, as past privacy bills in this Committee would require of every other consumer-facing business on Main Street that is not a bank or credit union. Exemptions for financial institutions and other entities subject to GLBA permit these select consumer-facing businesses to avoid proposed federal privacy bills' requirements and leave consumers unprotected while feeling a false sense of security they are fully covered.

Despite these concerns with past bills, we support and appreciate several Committee members' recent calls for Congress to enact a uniform, preemptive federal privacy bill that sets a national standard for consumer privacy protections. Such a privacy law would aid consumers and businesses alike by ensuring consumer privacy protections are the same regardless of the state in which a consumer resides or a business is located. The increasing patchwork of newly enacted state privacy laws is one of the key reasons a uniform federal privacy law is needed today.

With that in mind, we believe federal privacy legislation should establish a uniform, nationwide and consumer-centric federal data privacy law that embodies these principles:

1. Industry Neutrality and Equal Protection for Consumers Across Business Sectors – Federal data privacy frameworks and legislation should apply requirements to all industries that handle personal data and not place a disproportionate burden on certain sectors of the economy while simultaneously alleviating other sectors from providing equal protection of consumer data. An equivalent data privacy standard should apply, regardless of whether a business directly collected data from a consumer or obtained it in a business-to-business transaction.
2. Direct Statutory Obligations (Rather than Contractual Requirements Alone) for All Entities that Contact Consumer Data – Effective consumer protection regulations cannot be achieved by relying on some businesses to regulate the conduct of other businesses through contracts alone. Data service providers and other third parties need direct statutory obligations to ensure they comply with relevant privacy laws, particularly those offering transmission, storage, analytical processing or other consumer data services for thousands of small businesses.
3. Preservation of Customer Rewards and Benefits – Any federal data privacy framework should preserve the ability of consumers and businesses to voluntarily establish mutually beneficial business-customer relationships and set the terms of those relationships. Federal law should include safe harbors to ensure that consumers can purchase, or otherwise obtain, the goods and services they want by taking advantage of benefits, incentives or enhanced services they earn from being loyal customers, even if other customers choose not to engage in such programs.
4. Transparency and Customer Choice – Consumers deserve to know what categories of personal data businesses collect and how that data is generally used. These policies should be clearly disclosed in company privacy policies readily accessible to consumers. These obligations should apply to all businesses handling consumers' personal data, including service providers and third parties.

5. Accountability for Business's Own Actions - Privacy law should not include terms that could potentially expose businesses, including contractors and franchises, to liability for the actions or noncompliance of a business partner. Those business partners should be responsible for their own compliance and any resulting liability. In particular, consumer-facing businesses should not be unfairly saddled with liability if other types of businesses do not fulfill their own obligations under the law.
6. Data Security & Breach Notification – A federal data privacy law should include a reasonable data security standard for all businesses handling consumer data, as well as a uniform process for businesses suffering a data security breach to notify affected individuals. Currently, consumer-facing industry sectors are required to comply with 54 state and U.S. territorial laws on data breach notification requirements, and nearly half of the states have enacted data security laws. However, financial institutions and service providers are often exempt from these state breach notice requirements. All businesses handling consumers' data should be required to protect personal data and provide notice of their own security breaches when they occur.
7. Establishing Uniform Nationwide Rules and Enforcement for Data Privacy – Congress should create a sensible, uniform federal framework for data privacy regulation that benefits consumers and businesses alike by ensuring that sensitive consumer information is protected in a consistent manner regardless of the state in which a consumer resides. Preempting state laws by enacting a set of nationwide rules for all businesses handling consumers' personal data is necessary to achieve the important, national public policy goal of uniform consumer privacy protections.

As you consider ways to advance federal data privacy legislation, the members of the MSPC urge you to include these key principles in your bills and continue to solicit input from all affected industries and from businesses of all sizes during the legislative process. We look forward to a constructive dialogue with you on these matters as you craft federal data privacy legislation in the remainder of this session and in the next Congress.

Sincerely,
The Main Street Privacy Coalition

cc: The Honorable Charles E. Schumer
The Honorable Mitch McConnell
Members of the Committee on Commerce, Science, and Transportation