

September 18, 2017

Committee on Business and Economic Development
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Chairman Kenyan McDuffie:

We, the undersigned privacy and consumer protection organizations, write to strongly support B22-0403, the Broadband Internet Privacy Act of 2017, which would provide District of Columbia residents increased choice, security, and transparency over how internet service providers (ISPs) use data they collect from and about their customers. In light of the recent decision by Congress to repeal the Federal Communications Commission's (FCC's) Broadband Privacy Rule under the Congressional Review Act, it is incumbent upon local governments to fill that gap in protections for consumers. We applaud the Councilmembers for their leadership in introducing this vital legislation, and we urge the Chairman to schedule a hearing on this bill for public discussion.

Residents of the District of Columbia need strong privacy protections over how ISPs treat their data. ISPs have unique insight into customer activity because they provide internet service, for which they charge customers a substantial subscription fee, giving them access to a vast amount of data from and about their consumers, that requires them to collect a vast amount of data from and about their customers. While it may be possible for some consumers to take action and reduce their privacy risks once they are online, they have no choice but to use an ISP to access the internet and thus share data with the ISP. And *all* of a consumer's traffic flows over that internet connection, traffic which can convey very sensitive information such as race or nationality, sexual preference, religion, physical location, presence at home, personal banking details, and physical ailments.¹ Even if traffic is encrypted, ISPs still know the sites and services their customers use.

With such comprehensive data, ISPs can create intricately detailed profiles of their customers to sell to the highest bidder for a variety of purposes, including targeted digital advertisements for products like payday loans or expensive and unnecessary medications. District of Columbia residents should have options over whether their ISP monetizes the data it collects to provide those residents internet service. The Broadband Internet Privacy Act of 2017 ensures they have those choices.

¹ See *What ISPs Can See*, UPTURN (Mar. 2016), <https://www.teamupturn.com/reports/2016/what-isps-can-see>.

² While the vote was almost entirely partisan, 15 House Republicans bucked their leadership to vote to retain the FCC's broadband privacy rule. Senator Rand Paul, who co-sponsored the repeal measure in the Senate did not vote

The protections spelled out on the Broadband Internet Privacy Act of 2017 are necessary and reasonable. The bill essentially codifies existing business practices, as did the FCC's Broadband Privacy Rule. Section 3 of the bill requires transparency of privacy practices. Section 4 requires customer consent for certain uses or disclosures of their online activities by their ISP. Section 5 requires reasonable data security measures to safeguard their internet use from inadvertent disclosure. Section 6 requires notification to consumers and other entities in the event of a breach exposing their online activity. These provisions largely mirror the FCC rule that was recently overturned by Congress on a partisan vote.² Further, the public wants these protections. A YouGov poll last March found that 72% of Americans (from both parties) wanted President Trump to veto the measure that repealed the FCC's Broadband Privacy Rule.³

In the wake of Congress' decision to repeal the Broadband Privacy Rule, there are not clear rules governing how ISPs can use or disclose customer data. But, District of Columbia residents should be entitled to a reasonable expectation of privacy in the data ISPs collect to provide internet service given they often pay well over \$100 per month to an ISP. Just as we do not expect a cell carrier to listen to our phone calls, we should not expect them to watch and sell our web browsing and app usage history.

For these reasons, it is extremely important for the District of Columbia to stand up and protect its citizens' privacy rights. We believe that the Council should hold a public hearing on the Broadband Internet Privacy Act of 2017. We further look forward to engaging with Councilmembers on how the bill can be improved.

Signed,

ACLU of the District of Columbia
Center for Democracy & Technology
Center for Digital Democracy
Common Cause
Consumer Federation of America
Consumers Union
Consumer Watchdog
Open Technology Institute
Privacy Rights Clearinghouse

² While the vote was almost entirely partisan, 15 House Republicans bucked their leadership to vote to retain the FCC's broadband privacy rule. Senator Rand Paul, who co-sponsored the repeal measure in the Senate did not vote for the repeal in the end.

³ Jon Brodtkin, *Trump Move to Kill Privacy Rules Opposed by 72% of Republicans Survey Says*, ARS TECHNICA (Apr. 4, 2017), <https://arstechnica.com/tech-policy/2017/04/trump-move-to-kill-privacy-rules-opposed-by-72-of-republicans-survey-says>.

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