



July 5, 2016

**RE: Vote NO on Rep. Blackburn's Amendment No. 21 to H.R. 5485, the Financial Services and General Government Appropriations Act of 2017.**

Dear Representative,

On behalf of the American Civil Liberties Union (ACLU) please find the below vote recommendation urging you to vote "NO" on Rep. Blackburn's (R-TN) amendment no. 21 to H.R. 5485, the Financial Services and General Government Appropriations Act of 2017. This amendment would prevent any funds appropriated under the act from being used to implement the Federal Communication Commission's (FCC) broadband privacy proposed rule.

The ACLU supports<sup>1</sup> the FCC's proposal to apply the traditional privacy protections of the Communications Act to broadband Internet access service. We urge members of the House to vote against this amendment and allow the FCC's privacy rulemaking to go into effect unhindered.

If you have any questions please contact Legislative Counsel, Neema Guliani, at [nguliani@aclu.org](mailto:nguliani@aclu.org) or 202-675-2322.

Sincerely,

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<sup>1</sup> American Civil Liberties Union, Comment Letter on Proposed Rule on Protecting the Privacy of Customers of Broadband and Other Telecommunications Services (May 27, 2016), <https://www.aclu.org/other/aclu-comments-federal-communications-commissions-rulemaking-protecting-privacy-customers>.

**ACLU Vote Recommendation for Rep. Blackburn Amendment No. 21 to H.R. 5485, the  
Financial Services and General Government Appropriations Act of 2017.**

The Federal Communication Commission (FCC) adopted a Notice of Proposed Rulemaking (NPRM) on March 31, 2016, which seeks to protect consumer privacy with respect to the information that is obtained, used, and shared by their broadband internet access (BIAS) providers (i.e. companies that provide broadband internet, such as Verizon or Comcast).<sup>2</sup>

Because BIAS providers control the internet infrastructure itself, information collected by these entities poses distinct and substantial privacy concerns. Such concerns are amplified by the lack of direct market competition among BIAS providers, which diminish consumers' market power and ability to protect their own privacy. The NPRM would help to protect consumers by bringing BIAS providers under the privacy regime of Section 222 of the Communications Privacy Act, a law that has long-protected consumer's data privacy. The ACLU and a number of privacy and consumer groups, including the Consumer Federation of America, the Center for Democracy and Technology (CDT), and the Electronic Privacy Information Center (EPIC), strongly support the NPRM.<sup>3</sup>

If allowed to pass, Rep. Blackburn's amendment would effectively end this important step forward on expanding meaningful privacy protections to the digital sphere. **We urge you to vote NO on Rep. Blackburn's amendment no. 21.**

**The NPRM prevents customers from having to choose between having broadband service and giving up their privacy.** Customers of BIAS providers should not have to make a choice between controlling their privacy and being able to access broadband internet. With many consumers having few options for BIAS providers,<sup>4</sup> such a condition could leave customers, particularly those without financial means to find alternative service, with no choice but to give up their privacy in order to get access. The NPRM recognizes that such a choice could harm consumers and proposes prohibiting the practice of conditioning service, or certain kinds of service, on the waiver of privacy rights.<sup>5</sup>

**The NPRM recognizes that consumers should have choice in how their personal information is shared, which is particularly important given the unique privacy concerns posed by BIAS providers who act as the gatekeepers to the digital world.** The NPRM

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<sup>2</sup> Protecting the Privacy of Customers of Broadband and Other Telecommunications Services, [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-16-39A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-39A1.pdf). [hereinafter, "NPRM"]

<sup>3</sup> See, *supra* note 1; Letter from Consumer and Privacy Groups to Marlene Dortch Secretary, Fed. Comm. Commission, In the Matter of Protecting the Privacy of Customers of Broadband and Other Telecommunications Services (May 27, 2016) [http://consumerfed.org/wp-content/uploads/2016/05/5-26-16-Broadband-Privacy\\_Letter.pdf](http://consumerfed.org/wp-content/uploads/2016/05/5-26-16-Broadband-Privacy_Letter.pdf); Ctr. for Dem. & Tech., Comment Letter on Proposed Rule on Protecting the Privacy of Customers of Broadband and Other Telecommunications Services (May 27, 2016), <https://cdt.org/files/2016/05/Broadband-Privacy-Comment-FINAL-word.pdf>; Electronic Priv. Info. Ctr., Comment Letter on Proposed Rule on Protecting the Privacy of Customers of Broadband and Other Telecommunications Services (May 27, 2016), <https://epic.org/apa/comments/EPIC-FCC-Privacy-NPRM-2016.pdf>.

<sup>4</sup> Steve Lohr, *The Push for Net Neutrality Arose From Lack of Choice*, N.Y. TIMES Feb. 25, 2015, [http://www.nytimes.com/2015/02/26/technology/limited-high-speed-internet-choices-underlie-net-neutrality-rules.html?\\_r=0](http://www.nytimes.com/2015/02/26/technology/limited-high-speed-internet-choices-underlie-net-neutrality-rules.html?_r=0).

<sup>5</sup> NPRM, *supra* note 2 at 83.

proposes that BIAS providers obtain express opt-in consent from a customer before sharing his or her information with most third parties.<sup>6</sup> This common-sense protection is recognition of the incredibly intimate picture of an individual that can be painted with the kinds of data obtained by BIAS providers. Information collected, such as browsing history, log-in and log-out times, IP address (which can indicate location), and device identifiers, taken together or in part, can reveal one's religious affiliation, sexual orientation, economic class, medical conditions and much more. The opt-in approach proposed in the NPRM would provide consumer's greater control over when this information is disseminated, if at all.

**The NPRM provides consumers with greater transparency in what information is collected and how it is used.** Meaningful notice of what consumer information is collected and how it is used is a key component giving consumer's control of their privacy. The NPRM proposes that BIAS providers give clear, easy to understand, and timely notice to consumers of their privacy policies, including changes to those policies.<sup>7</sup> These notices would inform customers of their privacy rights, and provide an easy way for them to opt-in or out of their data being shared on an ongoing basis.

**The NPRM improves the security of consumer's private information by proposing measures to prevent data breaches.** Examples of hackers, identity thieves and even foreign governments stealing customer data abound.<sup>8</sup> And the concern surrounding this data falling into the wrong hands only becomes more acute when it can reveal intimate details of an individual's life. The NPRM contemplates several ways to mitigate this risk, including by limiting the retention period of certain information collected, implementing base-line standards for data security, and accountability when third parties misuse customer data.<sup>9</sup>

**The privacy protections of Section 222 of the Communications Privacy Act apply to BIAS providers.** Despite some claims to the contrary, the privacy protections that apply to telephone providers under the Communications Privacy Act also apply to BIAS providers. When enacting Section 222, Congress explicitly abandoned using language that would have limited the sections applicability to telephone service only.<sup>10</sup> Congress recognized that consumer privacy should not be constrained by the particular technology being used by that consumer—the plain language of Section 222 not only gives the FCC the authority to regulate BIAS providers, it requires it.

The FCC's NPRM also makes a number of other proposals to better protect consumer privacy, which are examined in greater detail in the ACLU's comments submitted to the FCC on May 27, 2016.<sup>11</sup> If you have any questions please contact Legislative Counsel, Neema Guliani, at [nguliani@aclu.org](mailto:nguliani@aclu.org) or 202-675-2322.

**We urge you to vote NO on Rep. Blackburn's Amendment No. 21 to H.R. 5485**

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<sup>6</sup> NPRM, *supra* note 2 at 9.

<sup>7</sup> NPRM, *supra* note 2 at 29-30.

<sup>8</sup> Bruce Schneier, *Data Is a Toxic Asset*, SCHNEIER ON SECURITY, (Mar 4, 2016), [https://www.schneier.com/blog/archives/2016/03/data\\_is\\_a\\_toxic.html](https://www.schneier.com/blog/archives/2016/03/data_is_a_toxic.html).

<sup>9</sup> NPRM, *supra* note 2 at 60-61.

<sup>10</sup> HAROLD FELD ET. AL., PROTECTING PRIVACY, PROMOTING COMPETITION: A FRAMEWORK FOR UPDATING THE FEDERAL COMMUNICATIONS COMMISSION PRIVACY RULES FOR THE DIGITAL WORLD 15 (2016).

<sup>11</sup> ACLU, *supra* note 1