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Joint Standing Committee on Judiciary

LD 1284, “An Act to Repeal Provisions of Law Governing the Privacy of Broadband Internet Customer Personal Information”

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Senator Carney, Representative Kuhn and distinguished members of the Joint Standing Committee on Judiciary. My name is Alex Minard; I am Vice President & Lead Legislative Counsel for NCTA – The Internet and Television Association, representing companies that construct and operate fiber-rich, high-speed broadband networks that connect over 82 million Americans nationwide to the internet. I appreciate the opportunity to support LD 1284, “An Act to Repeal Provisions of Law Governing the Privacy of Broadband Internet Customer Personal Information.”

It has been six years since Maine first enacted its ISP privacy law. A lot has changed in the national privacy landscape in that time, including monumental changes in technology and data usage and significant changes in how other states’ laws protect consumer information. Notably, despite Maine being the first state after California’s comprehensive privacy law to adopt its own privacy law, no other state has followed Maine’s lead. Instead of targeting one specific industry, as Maine did, 19 other states now provide individuals with comprehensive privacy protections across all platforms and industries.

Differential treatment of ISPs affirmatively harms and potentially confuses consumers. Numerous entities touch an individual’s personal data when a person goes online: the ISP, the website they are visiting, advertisers on the site, analytics providers embedded in the site, and any website to which the individual clicks through from there. A resident of Maine that goes online may believe that Maine’s existing law protects all of their data online, and they may not exercise the same caution they otherwise would with their personal information.

This consumer confusion would remain a concern even if Maine adopts a comprehensive law but retains its ISP only law with different standards. How is a consumer to understand that the same entity – for example, an ISP/video provider – offers both an opt-in and an opt-out for the exact same collection of the exact same data? The only reasonable solution is the one taken by every other state that has adopted a consumer privacy law – take the consumer’s perspective and protect their data consistently, regardless of who holds it at any particular time.

Maine’s existing law also fails to address consumers’ actual privacy concerns. ISPs have direct relationships with their subscribers and their core business model relies on subscription fees from those subscribers. ISPs are in your communities, installing service at homes, and working on the side of the road. By contrast, consumers have much less visibility into the many

companies that operate exclusively online. And many online companies' core business model relies on the processing of consumers' personal information.

Not only are these the entities from whom Mainers' data is currently unprotected, all of these entities have more visibility into consumers' data that is shared online. Nearly every website now uses encryption – HTTPS – and every major browser will alert individuals when they are attempting to access a site that does not. When a consumer visits an encrypted website, the ISP can at most see only that top level domain and limited metadata, like the name of the website's host and how long the connection with that site lasts, but in many cases it cannot see even that much information. The ISP cannot see that the individual visited specific pages within the top level domain, like an "About Us" page, that the individual entered "privacy" into the website's search box, or anything else that happens on the site. All of these things are visible to the website or app owner itself, though. The same principle applies to email service. When a consumer uses an email service that is not provided by their ISP, the ISP can only see the domain name and limited data about the connection, but not email contents, who the consumer is emailing with, or log-in information. But these are things the email provider can see, and yet the law does not cover them.

We urge the legislature to take this opportunity to truly protect consumers by repealing Maine's ISP only privacy law while adopting a comprehensive law that is consistent with what nearly 20 other states have done, including other states in New England. Consistent and uniform protections for consumers are the best way to ensure that personal information is protected across industries, across the internet, and across the country.