July 10, 2017

The Honorable Ed Chau
California State Assembly
State Capitol, Room 5016
Sacramento, CA 95814

RE: Opposition to Assembly Bill 375 (Chau)

Dear Assembly Member Chau:

The California Cable & Telecommunications Association (CCTA) is opposed to Assembly Bill 375, which proposes to enact the California Broadband Internet Privacy Act. Cable Internet Service Providers (ISP’s) are strong supporters of consumer privacy and firmly believe that companies operating online must maintain transparency, disclose what consumer data is being collected and how it is being used. Our members are subject to existing federal and state laws that protect their customers’ privacy, and are held accountable for their privacy commitments to consumers through existing unfair business practices statutes and Federal Communications Commission (FCC) enforcement actions.

AB 375 is unnecessary, is inconsistent with enforceable privacy requirements, would impose unnecessary notice requirements and threatens to create a patchwork of state privacy laws for a service that is interstate in nature.

We are aware that some policymakers have expressed concern that in April, Congress overrode privacy rules passed by the (FCC) that had never gone into effect. Importantly, Congress’s April resolution did nothing to take away existing privacy protections from consumers, including protections in Section 222 of the Communications Act, which establishes a duty for telecommunications companies to protect customer information. As both former FCC Chairman Tom Wheeler, under the former President Obama’s administration, and current FCC Chairman Ajit Pai have testified, the FCC retains the right to continue to bring enforcement actions for privacy violations under their statute.

In addition to existing federal protections, Internet Service Providers have made specific commitments to follow all Federal Trade Commission (FTC) privacy standards. The California Attorney General also has existing authority to enforce industry commitments to ensure consumers privacy under Business and Professions Code Section 17200. Like the FTC’s widely

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followed and highly respected privacy framework, these commitments emphasize transparency, consumer choice, data security and notice. Those same policy priorities are reflected in existing California laws including the Online Privacy Protection Act of 2003 (California Business and Professions Code Sections 22575-22579), the Student Online Personal Information Protection Act (Business and Professions Code Sections 22584 et.seq.), and the Confidentiality of Medical Information Act (Civil Code 56.06) that will continue to protect consumers’ privacy in California.

Further, state specific legislation that encourages a patchwork of state rules related to where the consumer is located are not needed and are inconsistent with the provision of a service that is interstate. AB 375 is inconsistent with effective and enforceable privacy requirements, as its provisions ignore any distinction between publicly available and non-identifiable information and highly sensitive personally identifiable information. Instead, all types of information are thrown into one basket that compels an opt-in consent for virtually any online transaction. This is in direct contradiction with the FTC’s approach, which was developed over time to accommodate the varying levels of subjectivity associated with individual privacy preferences and applies the most restrictive use and sharing limitations to the most sensitive data. Even the prior FCC rules acknowledged the difference between sensitive and non-sensitive data and ascribed different subscriber choice mechanisms to each. AB 375’s approach would deny consumers from receiving information that many actually would find beneficial.

Lastly, AB 375 is ambiguous in describing the scope of entities that are covered and wrongly suggest that the California Public Utilities Commission (CPUC) may deem any service they find providing a “functional equivalent” of Internet access service, as such.

For the reasons stated above, CCTA strongly opposes AB 375.

Respectfully,

Carolyn McIntyre

CAROLYN MCINTYRE
President

Cc: The Honorable Jerry Hill
Members, Senate Business, Professions & Economic Development Committee
Bill Gage, Consultant
Kayla Williams, Consultant