

March 1, 2021

The Honorable Whitney Westerfield  
702 Capital Avenue  
Annex Room 228  
Frankfort, KY 40601

Dear Senator Westerfield:

USTelecom – The Broadband Association and its members, America’s innovative broadband providers, are strongly committed to protecting consumer privacy. USTelecom memorialized this commitment in its *2018 Consumer Privacy Principles*, which state that “digital privacy is sacred and government has a role in ensuring that consumers can confidentially use the internet and maintain their privacy to the degree they are comfortable.”<sup>1</sup>

The proposed bill SB 190 takes the wrong approach, however. The best way to address consumer privacy concerns is through a uniform, technology neutral, national privacy law based on widely accepted core principles including transparency and respect for consumer choice.<sup>2</sup> Adding to the current patchwork of state and sector-specific privacy laws would be counterproductive, as it would provide neither clear, consistent protections nor certainty for businesses.

***A State-by-State Approach to Privacy Is Counterproductive for Consumers.*** Consumers deserve strong, consistent protection of their personal information online. Therefore, USTelecom and its members have welcomed and participated in the active conversation about the future of the U.S. privacy framework. Consumers expect consistent privacy protections online, regardless of where they are located and which services they use. Data does not recognize state borders, and a fragmented, state-by-state approach sets uneven rules and inconsistent protections for consumers that are difficult, and sometimes impossible, to implement. For example, SB 190 would require operators to build a specific opt-in and cookie management system for Kentucky residents. It also threatens to disrupt the digital services they receive through a constant barrage of pop-up windows as they navigate Web sites and applications.

***SB 190’s Overbroad Approach Would Cause Unintended Consequences and Is Otherwise Unworkable.*** SB 190 would require “express consent” from consumers for uses and disclosures of data recorded or collected by personal communications devices. Not only is such a requirement burdensome to implement for providers, these kind of broad express consent requirements provide little benefit to consumers. When consumers are constantly bombarded with pop-up consent notices, it most often leads to “notice fatigue,” and consumers stop paying attention to notices and simply click “Accept” to reach the content or service they are seeking. Such a regime places too much of the burden on consumers, and there is little evidence that it prevents the harm that may come from improper use and sharing of data.

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<sup>1</sup> See *USTelecom 2018 Consumer Privacy Principles*, Nov. 27, 2018, available at <https://www.ustelecom.org/ustelecom-consumer-privacy-principles/>.

<sup>2</sup> See, e.g., Jonathan Spalter, *Privacy is a Human Right*, Dec. 4, 2019, available at <https://www.ustelecom.org/privacy-is-a-human-right/>.

In terms of consequences, the bill leaves unclear whether ISPs can use and disclose information to enhance cybersecurity protections. Today, IP addresses, device identifiers, and other information are routinely shared among different entities to enhance the security of networks and systems. Under SB 190, however, it's unclear whether this information can be shared for such purposes. Similarly, it is unclear whether the bill would permit the internal use of customer information to improve ISPs' products and services, an activity that poses little risk of privacy harm to individuals.

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USTelecom and its members support strong privacy protections for consumers and welcome the vigorous conversation about improving the United States' approach to privacy. USTelecom appreciates the strong interest of the legislature to protect Kentucky citizens, and the state can play an important role in that regard. However, to optimally and consistently protect consumers without disrupting the internet services they rely on, privacy regulations must be established at the federal, not state, level.

Sincerely,

*/s/ B. Lynn Follansbee*

B. Lynn Follansbee  
Vice President, Policy & Advocacy  
USTelecom – The Broadband Association

CC: Kentucky Senate Leadership  
Kentucky Senate Economic Development, Tourism, and Labor Committee Members