

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

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June 11, 2014

The Honorable Al Franken
Chairman
Subcommittee on Privacy,
Technology and the Law
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jeff Flake
Ranking Member
Subcommittee on Privacy,
Technology and the Law
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Franken and Ranking Member Flake:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, opposes S. 2171, the "Location Privacy Protection Act of 2014." The Chamber strongly supports the legislation's goal of combating cyberstalking. However, S. 2171 contains commercial privacy provisions in Section 3 that are overly-broad, ignore technical realities, and fail to recognize successful, ongoing self-regulatory programs.

Geolocation data now is commonly used for many purposes, including locating nearby retailers, restaurants, and services; navigating to specific destinations; finding location-specific news, weather, and special offers; authenticating identities; detecting fraud; mitigating retail theft and loss; improving the location of retail displays for consumer convenience; and connecting with family and friends. With the expected growth of the Internet of Things, beneficial uses of geolocation data will continue to increase. These beneficial uses are markedly different than a cyberstalker using location data to threaten, harass, or commit an act of domestic violence or other heinous crime, all of which are already illegal activities.

The Chamber's concerns with S. 2171 include, but are not limited to, the overbroad definition of a covered entity; the obligations of a covered entity; the regulation of information collection instead of use; the imposition of regulations on entities that collect the geolocation information of more than 1,000 electronic communications devices; and the failure to take into account how consent is impacted if several users operate a device at different times. Since many streets run for great lengths, it serves no purpose to use "street name" in the definition of "geolocation information" as there would be no way to know if the individual was downtown or in the suburbs (e.g., Massachusetts Avenue in Washington, DC). Similarly, "street name" is not always applicable in rural areas where streets may have mile markers instead of names.

The Chamber also is troubled that S. 2171 lacks an exemption for information that is de-identified. The Chamber strongly opposes both the limited preemption language that would allow for a patchwork of inconsistent laws to apply in this area as well as the inclusion of a private right of action that would allow the plaintiffs' class action trial bar to bring potentially excessive, duplicative, and spurious litigation under the statute.

To help protect the privacy of mobile users, there are a myriad of existing self-regulatory programs and user-friendly technological solutions. Thus, legislation in this area is simply unnecessary and would clearly harm innovation, including development of the privacy-enhancing efforts that policymakers seek to foster.

The wireless marketplace is a vibrant, competitive, and consumer-driven environment. Thus, the Chamber is disappointed that S. 2171 associates permissible commercial location information with the criminal use of this data to cause harm or risk to the individual. Therefore, the Chamber opposes S. 2171 in its current form because it would create enormous regulatory uncertainty, stifle innovation, deter private-sector investment, and jeopardize the tremendous growth in wireless applications, services, and devices that has benefited both businesses and consumers. However, the Chamber looks forward to continued discussions with you, your subcommittee colleagues, and your staff on how best to target and combat cyberstalking.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten". The signature is fluid and cursive, with the first name "R." and last name "Josten" being the most prominent parts.

R. Bruce Josten

cc: Members of the Subcommittee on Privacy, Technology and the Law