

Opening Statement of Ranking Member Frank Pallone, Jr.
Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing, and Trade
Markup of H.R. ____, the Data Security and Breach Notification Act of 2015
March 24, 2015

Today we begin the Subcommittee markup process of a draft data security and breach notification bill.

As I said at our hearing on this issue last week, I want this Committee to take action to reduce data breaches and the adverse effects from them.

Unfortunately, the bill before us does not reduce breaches or their negative effects. And worse, it fails to ensure that existing protections for consumers are not weakened.

Many of the 51 state and territorial breach notification laws provide greater protections for consumers. For example, at least seven states and the District of Columbia do not require a harm analysis before providing notice to consumers. At least 17 states' laws include a private cause of action. At least nine states' laws cover health information.

In contrast, this draft preempts stronger state and federal laws, requires a financial harm analysis, preempts state private rights of action, and does not cover health information.

The draft also eliminates state data security laws and replaces them with an unclear standard that will surely be litigated and left to judicial interpretation.

Again, I want to be supportive of sound data security and breach notification legislation. But to get there, we must ask the right question. Does legislation put consumers in a better place than they are today? Unfortunately, the draft before us today does not meet that test.

Let me also address specifically the issue of federal agency jurisdiction within the draft before us. While it may sound to some as an “inside the beltway” issue with no affect on consumers, I disagree. It is with my eye on protecting consumers that I oppose the efforts here to remove data security, breach notification, and privacy for telecommunications, VoIP, cable, and satellite services from the jurisdiction of the Federal Communications Commission.

No one questions the Federal Trade Commission’s expertise in data security, but the FTC is primarily an enforcement agency and it lacks the necessary tools to effectively handle the unique data security, breach notification, and privacy issues of those services.

Furthermore, media reports this past weekend of a high-profile FTC investigation where the FTC chose not to take legal action show that an enforcement-only approach is not as effective as when legal standards are supported by agency rulemaking. As one former FTC employee said about the case, “Even if we were in the right and could win, it could take a lot of resources away from other enforcement.” Clearly, the threat of enforcement action alone is not enough to protect consumers in these types of cases and industry knows it.

In closing, Mr. Chairman, I must again raise a process issue. While I understand your interest in keeping to a time table, it does not make sense to move forward on a bill where even the authors of the bill are not in agreement. The document before us has several paragraphs in brackets. We do not know whether bracketed language is in or out, and some language in brackets explicitly states the lack of consensus on a major portion of this bill.

I hope we can work together to improve this bill before it moves to full Committee so that all members of the Committee have clear text before them. And I hope that text changes so that we can all support it.