

FCC Should Drop ISP Privacy Plan, 16 State AGs Say

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Sixteen attorneys general are urging the Federal Communications Commission to scuttle highly anticipated broadband privacy rules that would require internet service providers to clearly disclose how customer data is being used, in a letter released Monday.

The attorneys general, all Republicans, including Ken Paxton of Texas, Mike DeWine of Ohio and Brad Schimel of Wisconsin, told the FCC in a Sept. 9 letter that they opposed FCC's plan to take steps to protect the information and notify affected customers within 10 days of discovering a data breach.

"If this proposed rule moves forward, we are concerned that not only may it be read to preempt important state laws that effectively protect consumers' privacy, but this new approach will also foster a byzantine regulatory environment rather than clear, enforceable requirements that improve data privacy for all consumers," the letter said.

March's notice of proposed rule-making that FCC Chairman Tom Wheeler has circulated for consideration by the full commission is the result of efforts to come up with rules that specifically apply the privacy requirements of the Communications Act to broadband service providers. The agency stressed the proposal will not apply to the privacy practices of websites like Twitter or Facebook, over which the Federal Trade Commission has authority, or to other types of services offered by a broadband provider, such as operation of a social media website. It will be voted on by the full commission at its March 31 open meeting.

According to the commission, the new rules, built on the principles of choice, transparency and security, would give consumers more effective control over how their personal information is used and shared by requiring broadband service providers to obtain affirmative opt-in consent for the use and sharing of data that has not been specifically collected for the purpose of providing communications-related services.

Under the proposed rules, broadband providers would be allowed to

rely solely on their relationship with the customer to fulfill their obligation to obtain consent for the use and sharing of data that is necessary to provide broadband services and for marketing the customer's broadband service, the commission said.

But the attorneys general's letter hit back, telling the FCC to withdraw the rules and create a new approach in cooperation with the Federal Trade Commission and attorneys general.

"We are concerned about the possible preemption of state laws," the letter said. "As attorneys general, we are always concerned with protecting consumers' privacy and defending the protections our consumers have been afforded via our various state laws."

They further argued the proposed rules would make compliance more costly and complicated. "Crafting a patchwork of regulations imposes extra burdens on all who seek to protect consumer privacy, forcing them to navigate artificial distinctions before they can determine what rules do or do not apply in a particular circumstance," the letter said. "The proposed rule, especially in the context of an already complex regulatory environment, is not conducive to better outcomes."