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Statement by the Honorable Bobby L. Rush, Chairman

Energy and Commerce Committee Subcommittee on
Commerce, Trade and Consumer Protection

Hearing: H.R. 5777, the BEST PRACTICES Act of 2010

Thursday, July 22, 2010

WASHINGTON — “Good afternoon. Today we are pleased to welcome seven witnesses representing the Federal Trade Commission, consumers, and industry—especially businesses with an Internet presence and whose main line of business is to create and sell advertising. I would like to thank them for taking time out of their busy schedules to share their perspectives on consumer privacy as well as to outline what they view as appropriate offline, and online, business privacy protection and personal information use practices.

“Have you ever been in the midst of a group of people and heard someone say, “*What’s said in this room stays in this room?*” As someone in that room, you know, just from that statement, that what may be said could be juicy enough, sensitive enough, or valuable enough to tempt one of the persons in that room to violate that compact by leaking that information to people who were not in the room during the discussion. The very utterance of these words evidences a conscious intent by the participants to set the needed environmental conditions that will encourage those in the room to interact freely with one another and to share data and information, without the fear that that very information will harm them economically, emotionally, or otherwise at some point in the future.

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“As an avid user of the Internet and a person interested in technology, communications, and *all* things digital, I know there is no free lunch when I go onto an Internet website to read or view content—especially when I am not paying for that content. That Internet website and the advertisers who underwrite the overhead and operating costs of that website know that my information—whether it can be used to identify who I am, or whether it gets merged with other users’ information— has substantial value and can be ‘monetized’ when it is provided to others.

“Before the House was scheduled to adjourn for its August recess, I thought it was imperative, on Monday of this week, to introduce privacy legislation in the form of H.R. 5777, the BEST PRACTICES Act.

“I also thought it was important that we quickly hold a hearing, in this subcommittee, on the assorted pros and cons of my bill as well as the issues outlined in a discussion draft released by Chairman Boucher and Ranking Member Stearns of the Communications, Internet and Technology Subcommittee.

“The BEST PRACTICES Act speaks to a host of issues affecting consumer privacy, including consumers’ expectations as to how their personal information should be handled, shared, and disclosed to third parties. This legislation also addresses other important issues including what defaults should be set in connection with those expectations to provide regulatory certainty to industry and to investors; what safeguards should be crafted to anticipate foreseeable abuses and violations of consumers’ privacy expectations; which sets of remedies will make consumers whole in the event of a privacy breach; and how to calibrate penalties and other possible legal causes of action without chilling industry incentives to innovate and grow their businesses.

“This legislation also addresses to what extent, if any, should the privacy framework set forth in my bill *preempt* state privacy laws and regulations.

“In holding this hearing, I would like to get a better handle on how extensively personal information gets shared without individuals’ understanding and consent. I also want to shine a spotlight on some of the actual harms that befall individual users through no fault of their own.

“With that I yield back the balance of my time.”