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Statement by the Honorable Bobby L. Rush, Chairman
Energy and Commerce Committee Subcommittee on
Commerce, Trade and Consumer Protection
Hearing: “Do-Not-Track Legislation: Is Now the Right Time?”

Thursday, December 2, 2010

WASHINGTON — “Good morning.

“We are pleased to welcome into our midst today seven witnesses. They have graciously offered to share their views with our Subcommittee about the feasibility of a legislated ‘Do-Not-Track’ mechanism, and how technological solutions to privacy perils and pitfalls could augment a comprehensive, national privacy framework.

“Through such a mechanism, consumers could advise would-be trackers unambiguously and persistently that they do not wish to be followed by digital snoopers and spies across web sites and their various fixed and mobile computing devices.

“More than two years ago, I heard testimony as Chairman of this Subcommittee from Ms. Lois Gresham, the FTC’s Associate Director of the Division of Marketing Practices. Ms. Gresham spoke about the FTC’s successes in rooting out deceptive and abusive telemarketing acts and practices through the Do-Not-Call Registry.

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“From Fiscal Years 2003 through 2007, more than 145 million telephone numbers had been entered into the Do-Not-Call registry. Over the same period, approximately \$80 million in fees had been collected from a base of over 18,000 unique entities, who accessed data from the Registry.

“As part of that opt-out and enforcement regimen, the FTC stood prepared to initiate cases under its Telecommunications Sales Rule to obtain temporary and permanent injunctions against ongoing violations, secure orders for more than half a billion dollars in consumer restitution, and refer civil penalty actions to the Department of Justice.

“Almost a year before Associate Director Gresham’s 2010 testimony, and following two days of FTC town-hall meetings on online behavioral tracking in the fall of 2007, the Consumer Federation of America and other privacy groups noted that self-regulatory initiatives devised by industry had failed.

“One of those groups, the Consumer Federation of America, which happens to be represented today by Ms. Susan Grant, called upon the FTC back then, to implement a one-stop, opt-out for online tracking, similar to the agency’s successful *Do-Not-Call* registry.

“As the end of this second session of the 111th Congress quickly approaches, it would appear that we have come full circle with the FTC’s endorsement of a “Do-Not-Track” mechanism, released just yesterday in its 122-page preliminary staff report. The title of that draft report is *Protecting Consumer Privacy in an Era of Rapid Change*.

“Being the last hearing of this Subcommittee that I will chair in this Congress, please allow me to reflect briefly on some of the major accomplishments and achievements of the Commerce, Trade, and Consumer Protection subcommittee over the 110th and the 111th Congresses.

“With the assistance of my colleagues, on both sides of the aisle, i have convened hearings, markups, and helped to guide successfully more than a dozen bills out of the full committee – including the Consumer Product Safety Improvement Act and the Wall Street Reform Act.

“Our subcommittee was also very active in conducting oversight of the National Highway Traffic Safety Administration in the wake of massive recalls of unsafe automobiles. We also asked questions at hearings about the effects of the disastrous Macondo oil well spill on the Gulf-area tourism and travel industry and the health effects of formaldehyde on purchasers of post-Katrina trailers.

“I am immensely proud of the collaboration that has existed between this Subcommittee and the Communications, Technology and Internet (CT&I) subcommittee, currently led by my friend, Chairman Boucher.

“In working closely with the CT&I Subcommittee to conduct oversight and to draft legislation, our two subcommittees held six joint hearings during the 111th Congress on a range of public safety and consumer protection topics, including “texting while driving” and online and offline privacy.

“I do believe that the Record will show that this Subcommittee was highly productive and effective, accomplishing so much in a relatively short amount of time.

“With that, I would once again thank the witnesses for coming in this morning and will yield back the balance of my time.”

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