



**Testimony of
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In Opposition to Assembly Bill 4974

February 14, 2019

**Before the
New Jersey Assembly Committee on Science, Innovation and Technology**

Chair Zwicker and members of the committee, on behalf of CTIA, the trade association for the wireless communications industry, I am here in opposition to Assembly Bill 4974. A4974 raises particular concerns because its requirements would not apply evenly across commercial marketplaces, which could distort competition, create consumer confusion, and harm innovation. It would also be difficult to operationalize and would mandate an onerous notice and consent regime.

Consumer privacy protections should apply consistently across all industry sectors. A4974 applies to just one specific form of location data, Global Positioning System (GPS) data, held by one type of entity--mobile device application operators. A privacy law should provide consistent protections based on data sensitivity, rather than drawing distinctions based on who is handling a consumer's data. The potential for uneven coverage clashes with consumers' expectations.

Broad opt-in consent requirements provide little evident benefit to consumers and are burdensome, if not infeasible, for businesses to implement. A4974 would require mobile device application companies to obtain opt-in consent to disclose GPS data for routine disclosures that consumers expect in a given context. For example, a ride sharing application whose drivers are independent contractors would need to get opt-in



consent from a consumer to share his or her location with the driver. The bill's consent requirements could also lead to "notice fatigue," in which consumers stop paying attention to notices and simply click to approve every request – but businesses would still face the burden of presenting and recording these consents. The burden of complying with this kind of obligation would be tremendous.

In addition, this bill is difficult to operationalize in a mobile environment where people and data flow freely. The bill covers a "user" of a mobile application, which is defined as an individual within the state who provides GPS data to an operator. This broad definition means an operator would have to determine each and every time a user travels into or through the state to ensure the user receives the mandated notice and provides consent before GPS data can be shared. In fact, a user who is actually on the Pennsylvania side of the Delaware River but whose GPS data places them in New Jersey would receive these notices and may have no idea why they are receiving them thus creating further consumer confusion. Truck drivers, train passengers, and others who pass through the state will face a confusing barrage of opt-in requests as they pass the state line, and operators will be required to manage all of these user actions.

A4974 is also unnecessary because the Federal Trade Commission's privacy framework, which applies to most companies that collect and use personal data, classifies geolocation information as sensitive personal data. Consequently, companies are directed to obtain opt-in consent prior to collecting it and using it for marketing purposes. The FTC framework also requires companies to be transparent with users about the ways in which personal data is collected, used, and disclosed.



CTIA strongly supports ongoing efforts within the federal government to develop a uniform national approach to consumer privacy.¹ Several federal agencies, including the Federal Trade Commission (FTC), the National Telecommunications and Information Administration (NTIA), and the National Institute of Standards and Technology (NIST) are involved in these efforts. More than 200 organizations and individuals filed comments with NTIA last November, and these comments expressed broad support for federal privacy legislation. The stakes involved in consumer privacy legislation are high. Taking the wrong approach could have serious consequences for consumers, innovation, and competition. Moving forward with A4974 would only complicate these efforts while imposing serious compliance challenges and burdens on businesses and ultimately confuse consumers.

In conclusion, A4974 is likely to have unintended consequences and is unnecessary in light of the FTC privacy framework. As a state-specific privacy regulation, it would contribute to a patchwork of differing requirements for companies that operate in a mobile environment across multiple states. For these reasons, we would respectfully request that the committee not move this bill. Thank you for your consideration.

¹ See *generally* Comments of CTIA, Developing the Administration's Approach to Consumer Privacy, NTIA Docket No. 180821780-8780-01 (Nov. 9, 2018).