

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

ACA CONNECTS – AMERICA’S
COMMUNICATIONS ASSOCIATION;

CTIA – THE WIRELESS ASSOCIATION®;

NCTA – THE INTERNET & TELEVISION
ASSOCIATION; and

USTELECOM – THE BROADBAND
ASSOCIATION,

Plaintiffs,

v.

AARON FREY, in his official capacity as
Attorney General of the State of Maine;

PHILIP L. BARTLETT II, in his official
capacity as Chairman of the Maine Public
Utilities Commission;

R. BRUCE WILLIAMSON, in his official
capacity as Commissioner of the Maine Public
Utilities Commission; and

RANDALL D. DAVIS, in his official capacity
as Commissioner of the Maine Public Utilities
Commission,

Defendants.

Civil Action No. _____

**COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

Plaintiffs ACA Connects – America’s Communications Association, CTIA – The Wireless Association®, NCTA – The Internet & Television Association, and USTelecom – The Broadband Association allege:

PRELIMINARY STATEMENT

1. Plaintiffs and their members, which include Internet Service Providers (“ISPs”), are committed to protecting their customers’ privacy. Plaintiffs and their members have consistently supported reasonable laws and regulations that safeguard consumers’ personal information uniformly across all consumer-facing companies, whether online or offline.

2. The Maine statute challenged here, L.D. 946 (June 6, 2019) (“the Statute”), which was enacted purportedly to advance the goal of consumer privacy, is not such a law. The Statute imposes unprecedented and unduly burdensome restrictions on ISPs’, and only ISPs’, protected speech. These include restrictions on how ISPs communicate with their own customers that are not remotely tailored to protecting consumer privacy. Indeed, by targeting ISPs alone, the Statute deliberately thwarts federal determinations about the proper way to protect consumer privacy — that is, with technology-neutral, uniform regulation.

3. The Statute violates the First Amendment because, among other things, it: (1) requires ISPs to secure “opt-in” consent from their customers before using information that is not sensitive in nature or even personally identifying; (2) imposes an opt-out consent obligation on using data that are by definition *not* customer personal information; (3) limits ISPs from advertising or marketing non-communications-related services to their customers; and (4) prohibits ISPs from offering price discounts, rewards in loyalty programs, or other cost-saving benefits in exchange for a customer’s consent to use their personal information. The Statute thus excessively burdens ISPs’ beneficial, pro-consumer speech about a wide variety of subjects, with no offsetting privacy-protection benefits. At the same time, it imposes no

restrictions at all on the use, disclosure, or sale of customer personal information, whether sensitive or not, by the many other entities in the Internet ecosystem or traditional brick-and-mortar retailers, thereby causing the Statute to diverge further from its stated purpose. To make matters worse, the Statute is shot through with irrational distinctions between closely related types of speech based on the content of the speech.

4. Protecting customer privacy is a laudable objective that ISPs support. But Maine has not shown — through evidence in the legislative record — that ISPs' privacy practices are causing any harm whatsoever to consumers, let alone harm that justifies unique restrictions on ISPs' communications. Nor has Maine shown that such unique restrictions are needed in light of federal privacy standards, which apply evenly across businesses of all types. Maine cannot discriminate against a subset of companies that collect and use consumer data by attempting to regulate just that subset and not others, especially given the absence of any legislative findings or other evidentiary support that would justify targeting ISPs alone. Maine's decision to impose unique burdens on ISPs' speech — while ignoring the online and offline businesses that have and use the very same information and for the same and similar purposes as ISPs — represents discrimination between similarly situated speakers that is impermissible under the First Amendment. *See Sorrell v. IMS Health Inc.*, 564 U.S. 552, 572 (2011); *U.S. West, Inc. v. FCC*, 182 F.3d 1224, 1238-39 (10th Cir. 1999).

5. This speaker-based discrimination, which renders the Statute inconsistent with its avowed goal of protecting consumers' privacy, is not the only reason the State cannot carry its burden under the First Amendment. Indeed, the Statute lacks any reasonable fit between its provisions and advancing consumer privacy — even as applied to ISPs. For example, the Statute restricts wide swaths of information that raise no plausible privacy concerns at all, including

information the Statute defines as *not* customer personal information. In addition, the Statute draws sharp, content-based distinctions between categories of speech that cannot be explained by any interest in protecting privacy — allowing, for example, ISPs to use consumer data for speech about their communications-related services but not about their *non*-communications-related services. The Statute also restricts valuable non-commercial speech such as location-based public service announcements and mandatory reports to the federal government.

6. The Statute’s speech restrictions are also too vague to comply with due process because they force ISPs to guess at the boundaries of those restrictions. *Johnson v. United States*, 135 S. Ct. 2551, 2561 (2015). The Statute’s amorphous, broad, and open-ended restrictions will therefore chill ISPs’ protected First Amendment speech.

7. In addition to violating the First Amendment in multiple respects, the Statute is preempted by federal law because it directly conflicts with and deliberately thwarts federal determinations about the proper way to protect consumer privacy. Indeed, the Statute’s express purpose was to contradict Congress’s decision — embodied in a binding joint resolution signed by the President — to repeal and prohibit the federal adoption of an ISP-specific privacy regime in favor of privacy rules that apply uniformly to all companies holding consumers’ personal information. The Statute also conflicts with the Federal Communications Commission’s (“FCC”) decision that a combination of disclosure, competition, and Federal Trade Commission (“FTC”) oversight — not prescriptive ISP-specific rules — best balances the federal policies of promoting broadband and protecting consumer privacy. And it does so in a manner that makes it impossible for Plaintiffs’ members to comply with mandatory federal reporting requirements and other disclosures required by law.

8. The Court should declare the Statute unconstitutional and enjoin its enforcement.

PARTIES

9. Plaintiff ACA Connects – America’s Communications Association is a trade association representing nearly 800 small and medium-sized independent operators that provide video, broadband, and phone services. ACA Connects’ members often operate in smaller markets and rural areas, where they provide communications services that are crucial to the economic prosperity of the communities they serve. ACA Connects’ members include providers of broadband Internet access service in the State of Maine. ACA Connects maintains its principal place of business in Pittsburgh, PA.

10. Plaintiff CTIA represents the U.S. wireless communications industry and companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. Its members include providers of wireless broadband Internet access service to households, businesses, and governmental entities throughout the country, including to customers in the State of Maine. CTIA maintains its principal place of business in Washington, D.C.

11. Plaintiff NCTA is the principal national trade association of the cable industry in the United States. NCTA’s mission is to protect and advocate for the interests of the cable and telecommunications industry. Its members include cable operators offering fixed and wireless broadband Internet access services to households, businesses, and governmental entities throughout the country, including to customers in the State of Maine. NCTA maintains its principal place of business in Washington, D.C.

12. Plaintiff USTelecom is a non-profit association of telecommunications companies of all sizes working toward the common goal of providing accessible, thriving, and secure

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