CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
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December 5, 2012

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, opposes S. 1223, the "Location Privacy Protection Act of 2011," and the substitute amendment for the legislation expected to be offered at mark-up, as currently drafted. Though the Chamber supports the laudable intent of providing greater transparency to consumers about when and how their geolocation information is being collected and used, S. 1223 is seriously flawed because it is overly-broad, ignores technical realities, and fails to recognize successful, ongoing self-regulatory initiatives.

S. 1223 would impose unnecessary and burdensome requirements on covered entities, derailing the tremendous growth in wireless applications, services, and devices that has benefited both businesses and consumers. Geolocation data now is commonly used by smartphone and tablet users for many purposes, including locating nearby retailers, restaurants, services; navigating to a specific destination; finding location-specific news, weather, and special offers; and connecting with family and friends.

The Chamber has many serious concerns with S. 1223 including, but not limited to, the broad definition of a covered entity; the obligations of a covered entity (e.g., how can a third-party seek consent from a consumer if there is no direct relationship between them?); vagueness regarding the granularity of geographic information meant to be covered under the Act (e.g., city, zip code, intersection, or exact location); the triggering of multiple privacy notices that will unnecessarily interfere with the user's online experience, despite the intent of the "One Time Consent" section of the bill; failure to recognize that there may be several users operating a device at different times and what that means for consent; and the lack of platform neutrality (e.g., a program on a desktop would be treated differently than a program on a mobile device). Additionally, the Chamber is deeply troubled that S. 1223 lacks an exemption for information that is anonymized, and the legislation contains weak preemption language that will still allow for a patchwork of inconsistent laws to apply in this area.

The Chamber is also strongly opposed to the legislation's express expansion of litigation such as the private right of action and grant of authority to state attorneys general to enforce the statute. Both of these provisions will allow the plaintiffs class action trial bar to bring potentially

excessive, duplicative and spurious litigation under the statute (either on behalf of state attorneys general or private citizens).

There is a vibrant, competitive, consumer-driven market with many groups focused on enhancing or creating new self-regulatory regimes as well as user-friendly technological solutions. For example, the Association for Competitive Technology, CTIA—The Wireless Association, the Digital Advertising Alliance, the Mobile Marketing Association, and the multi-stakeholder process underway at NTIA all are working to improve transparency of information gathered and used by mobile applications. Thus, legislation in this area is not necessary and would harm innovation, including development of the privacy-enhancing technologies that policymakers seek to foster.

The Chamber urges you to oppose S. 1223, and the anticipated substitute amendment, as currently drafted. The Chamber looks forward to continued discussions with you, your committee colleagues, and your staff on this very important topic.

Sincerely,

R. Bruce Josten

cc: Members of the Senate Committee on the Judiciary