August 11, 2017

The Honorable Thomas J. Donovan, Jr.
Attorney General of Vermont
109 State Street
Montpelier, VT 05609-1001

The Honorable Michael S. Pieciak, Commissioner
Vermont Department of Financial Regulation
89 Main Street
Montpelier, VT 05620–3101

RE: State of Vermont Data Broker Regulation Working Group Written Comments

Dear General Donovan and Commissioner Pieciak:

Thank you for the opportunity to testify on July 25, 2017 at the public hearing and to also provide the following written comments regarding potential data broker state regulations. My name is Matt Mincieli and I'm the Northeast Region Executive Director for TechNet.

TechNet is the national, bipartisan network of over 70 technology companies (a list of our member companies can be found on our website - www.technet.org) that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet is committed to advancing the public policies and private sector initiatives that make the U.S. the most innovative country in the world. I had the opportunity to testify earlier this year at the public hearing on SB 72 and work with Chair Botzow, who was very thoughtful and deliberate in how he approached this issue, and his Committee on the compromise language eventually passed by the Committee, and appreciate the invitation from the Attorney General's office to continue the engagement on this important issue via the working group created by SB 72.

First and foremost, the issue of how to define a "data broker" – it's a fool's errand for Vermont to go it alone and try and define a term that is constantly evolving along with the use of data in the technology industry. The Federal Trade Commission (FTC) proposed defining data brokers as "companies that collect information, including personal information about consumers, from a wide variety of sources for the purpose of reselling such information to their customers for various purposes, including verifying an individual's identity, differentiating records, marketing

products, and preventing financial fraud." TechNet does not know how Vermont would be able to craft a definition that is not so overly broad, as it was in the original drafts of SB 72 that, if codified, it would not make Vermont such a significant outlier as to negatively impact the state's technology sector and the ability of data brokers to continue to innovate and grow their business in Vermont. Casting such a wide net, either intentionally or inadvertently, will adversely impact TechNet members who all operate in all 50-states that would be forced to develop a specific set of protocols just for Vermont, when companies are already following strict sets of federal, state, and self-policing privacy policies.

A decade ago, the term data broker meant something entirely different and we would be having a completely different conversation right now as this conversation might only impact our members in the telecomm sector. Now, with the advent of the App Economy, the Internet of Things, Smart Cities, the explosion of eCommerce over brick & mortar - all these sectors are running on "big data" and the responsible sharing of this data is more significant to the technology sector than ever before. These innovations are proof that companies don't just use data to provide the services of today - data is a tool for innovation and helps us build the services of tomorrow.

The nature of data-driven services is to use data they collect to improve the services they deliver to people and to build new services. Consumers increasingly expect — even demand — this from the services they use online, and businesses consider data-driven innovation to be fundamental to meeting consumer needs and staying competitive. Here are some examples:

- Amazon used information about millions of consumers' purchases — and their browsing activity — to build its recommendation engine
- Google used location information collected in other contexts to build its Maps app.
- Facebook used location information to build its "safety check" product, which prompts people to tell they're friends they're safe when they're in an area affected by a disaster.

Imposing restrictions around the use of data for purposes other than providing services would limit what's called "secondary uses" of data. All of these services were built through secondary uses of data. In fact, secondary uses of data are where innovation comes from; that's what people are talking about when they're talking about "big data." That's where the promise of innovation comes from. Restricting the creation and uses of "big data" would dash that promise and the positive economic impact it would bring.

In 2014, the FTC produced an extensive report on the data broker industry and the Chairwoman of the FTC in her remarks on the report found that "data brokers help

prevent fraud, improve product offerings, and deliver tailored advertisements to consumers, which benefit businesses, consumers, and our economy more generally."

Data is also used as a humanitarian tool to empower communities and improve people's lives by driving innovative solutions for social good. Companies use data for good in a variety of ways - many of which have yet to be imagined. For example, companies have undertaken humanitarian projects to:

- Use social media signals to determine food price statistics in countries like Indonesia
- Use of Twitter during the earthquake in Haiti to map aid requests for non-governmental organizations
- Map social and biophysical flood vulnerability
- Help hospitals better manage populations of patients for improved health outcomes
- Find clues to cancer, even before diagnosis of the disease, through analyzing search engine queries
- Use location data to build Disaster Maps to show humanitarian organizations where people move after a natural disaster so that they can direct relief appropriately.
- Use location data to provide life-saving services like Safety Check and Amber Alerts.

And finally, a variety of protections are already in place to protect people against harmful uses of data. And the proper forum to put new protections in to law for an industry that operates across every state border is at the federal level and that debate continues, regardless of who is in the White House and what party controls Congress. The bad practices people are worried about when it comes to data brokers are *already* illegal. We already have laws on the books that prohibit scams, financial fraud, identity theft, stalking, and similar harms. Rather than focusing on new technologies and new uses of data, let's focus on the bad outcomes we're trying to prevent and how to leverage existing laws that already make these illegal. The FTC has announced legislative proposals they think are needed to protect consumers and have brought multiple enforcement actions against data brokers who have sold personal information to scammers and we suggest Vermont wait and see how Congress will act on those proposals before regulating data brokers on their own.

Thank you for the opportunity to provide comments today and I look forward to continuing the dialogue with the Attorney General's office and Legislature as the Working Group progresses.

Respectfully,

Matt Mincieli
Northeast Region Executive Director
TechNet