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January 23, 2011

The Honorable Gary Locke  
Secretary of Commerce  
United States of America  
Washington, D.C.

*RE: Respondent's Comments on the Departments' Green Paper titled: **Commercial Data Privacy and Innovation in the Internet Economy: A Dynamic Policy Framework***

Dear Mr. Secretary:

I read with interest the referenced Green Paper and want to congratulate those who participated in its formulation for their efforts. I would also like to thank you for an opportunity to respond to the elements of the Green Paper.

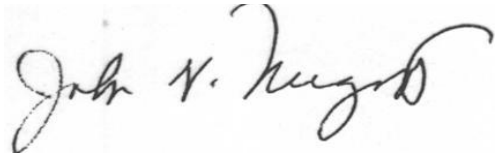
Regarding the referenced paper, I have several principal concerns which I believe will lead to outcomes that differ materially from the intended goals espoused in this Green Paper.

Namely, the mechanism for primary compliance is based on voluntary cooperation, compliance, and participation. I believe the result of the draft plan as espoused in the Green Paper will not gain the level or degree of cooperation, participation and compliance with the tenets as drafted because of the economic value of the data intended to be protected in this draft document. That is, commercial enterprises will not limit their ability to generate significant revenues from the information they hold unless it is mandated by law.

Secondly, the draft plan as written in the Green Paper is basically structured much like the Gramm–Leach–Bliley Act (GLB), also known as the Financial Services Modernization Act of 1999, (Pub.L. 106-102, 113 Stat. 1338. This GLB Act has failed to protect U.S. parties' privacy information because it was developed, perhaps intentionally, with a logic fault built in. This logic fault is the 'opt out' versus an 'opt in' structure. Most people do not read, understand, or respond to GLB privacy 'opt out' notices. Rather, most GLB privacy notices wind up in the circular file – waste basket. Hence, institutions are left in the main to freely sell U.S. parties' privacy information.

So, unless compliance is made mandatory by law, and the structure changed to an 'opt in' versus 'opt out' structure, it is believed the privacy protections as contemplated in the Green Paper will not materialize.

Respectfully submitted,

A handwritten signature in black ink, reading "John V. Nugent". The signature is written in a cursive style with a large, sweeping initial "J".