

Prepared Statement of Perry Robinson

Statement of Perry Robinson  
Associate General Counsel  
Rackspace Hosting

Before the  
Subcommittee on the Constitution, Civil Rights, and Civil Liberties  
United States House of Representatives

Hearing on ECPA Reform and the Revolution in Cloud Computing

September 23, 2010

**Chairman Nadler, Ranking Member Sensenbrenner, and honorable Members of the Committee**, my name is Perry Robinson, and I am Associate General Counsel at Rackspace Hosting, a technology company that delivers hosting services to businesses of all sizes and all kinds around the world.

My responsibilities at Rackspace include directing a team of attorneys and legal professionals regarding legal and contractual matters relating to the provision of services to our customers. As part of these responsibilities I oversee Rackspace's program for compliance with state and federal law enforcement agency requests, warrants, and subpoenas; state and federal regulatory requests; and other court orders. I am also a Certified Information Privacy Professional (CIPP) and member of the International Association of Privacy Professionals.

We at Rackspace would like to thank you for the opportunity to share Rackspace's views on the reform of the Electronic Communications Privacy Act of 1986 (ECPA). This initiative is an important one, not only because of the potential impact this initiative can have on the privacy of individuals and the efforts of law enforcement agencies, but also on the economic development and growth of the technology sector in the United States and growing businesses such as Rackspace.

Rackspace Hosting is a company that has specialized in providing dedicated and cloud hosting services as well as paid email service to its customers with products such as Rackspace Managed Hosting, The Rackspace Cloud™ and Rackspace Email & Apps. Rackspace began as the idea of few college students at a small liberal arts university in San Antonio, and since its inception in 1998, Rackspace has built a service oriented IT business by focusing on the hosting needs of its customers and their desire for customer service by providing what Rackspace calls Fanatical Support. Over the last dozen years, Rackspace has transformed from that small college based business to a leading provider of hosting services with more than 99,000 customers including over 80,000 cloud computing customers. Even during these economically challenging times Rackspace has managed to grow, creating employment for thousands of people in San Antonio, Texas; Dallas, Texas; Herndon, Virginia; and Chicago, Illinois.

## **WHAT IS THE CLOUD?**

You may have heard the term cloud computing or 'the Cloud,' but there are so many definitions flying around that you would not be alone if you struggled to

define it. Simply put, cloud computing is a set of pooled computing resources and services delivered over the Internet. Cloud computing should not be confused with grid computing, utility computing, or autonomic computing as it involves the interaction of several virtualized computing resources. As an example, Rackspace's Cloud Servers™ connect and share information based on the level of website traffic across the entire network. Cloud computing is often provided "as a service" over the Internet, typically in the form of infrastructure as a service (IaaS), platform as a service (PaaS), or software as a service (SaaS). Cloud computing delivers flexible applications, web services, and IT infrastructure as a service, over the Internet which allows users to create, store, access and use data from anywhere in the world using an ever growing number of computing and electronic devices.

The availability of cloud computing technology enables the growth of new businesses in which many of the traditional costs are reduced, if not eliminated. Cloud customers don't have to raise the capital to purchase, manage, maintain, and scale the physical infrastructure required to handle drastic fluctuations in the number of users accessing their systems. Rackspace's customers have clearly expressed their desire to make use of these advantages through the adoption of cloud technology, and service providers like Rackspace have invested heavily in the technology that will permit them to do so.

## **CLOUD COMPUTING TECHNOLOGY AND THE ECPA**

When the ECPA became law nearly a quarter century ago, much of the technology driving Rackspace's customer's businesses did not exist. Not only has

computing technology changed and advanced over the past two-plus decades, the consumption and adoption of this technology has changed as well. In fact, it is this consumption and adoption of computing resources that has driven Rackspace's own growth. Rackspace believes that we are in the midst of yet another revolution in computing and technology today as cloud computing comes to the forefront.

While this revolution has already begun, the way that cloud computing technology works, and more importantly, when it is being used, remains murky for many Americans. For example, how many Americans are aware that their free email service is provided through cloud computing? How many are aware that the legal protections regarding their emails can vary because the email service is provided using cloud computing technology? Cloud computing technologies may very well be common place, but many Americans are unaware of the ways in which their data may be accessed under the ECPA when stored with a cloud service provider.

### **RACKSPACE SUPPORTS ECPA REFORM**

Over the past months, you have been presented with the testimony of many learned scholars and professionals regarding the need to update the ECPA and the specific areas where discrepancies or difficulties lie. You have heard repeatedly about confusion in the courts regarding the meaning and intent of the ECPA, and among law enforcement and service providers like Rackspace as well. While there have been differences of opinion as to precisely how the ECPA should be updated, the need for the update is near unanimous. Rackspace too sees the need to reform and update the ECPA.

To be clear, Rackspace does not believe that the ECPA is flawed in its intent, and does not seek to change the need to balance individual interests in the privacy of their electronic communications with the needs of law enforcement, however Rackspace does see the ECPA as having fundamentally failed to maintain pace with changes in technology. This failure to keep pace has created challenges in which the legal protections afforded to a person with regard to a particular piece of information change not based on the nature of the data itself, but on the means of storage including storage with a cloud service provider.

While the way that people create, store, access and use data is changing, expectations regarding privacy have not changed. As a company that has literally based its business on customer service and customer experiences, Rackspace is experiencing challenges in its ability to communicate the applicability of the ECPA to the growing desire by consumers to access the advantages of technology like cloud computing.

For Rackspace, these challenges also translate into economic costs. First, there is the actual cost of providing staff to address law enforcement requests for customer data pursuant to the ECPA. These costs are not limited to the processing of a subpoena or other order, rather, they often extend to legal costs relating to the opinion of counsel. These costs are often times disproportionate to the fees that a service provider such as Rackspace may earn in hosting the data.

Secondly, there is the cost of lost business from abroad. As new laws regarding privacy and data protection emerge all over the world, new and

additional requirements for technology providers and users are also created. Our customers abroad want to do business in the United States, but are often faced with questions about how the ECPA may apply to data stored by their end users. These customers are seeking electronic data privacy laws that are intelligible and predictable so that they can meet regulatory requirements and the expectations of their own customers. The current state of the law as it relates to the ECPA puts American businesses like Rackspace at a significant disadvantage with companies based abroad. Without such clarity, American businesses like Rackspace face challenges in their growth within the United States, ultimately impacting their ability to contribute to the growth of the US economy.

Finally, given the demands of consumers to know how laws that apply to the protection of their electronic data will be applied by law enforcement and the courts, the current lack of clarity in the ECPA has to a degree inhibited the growth and adoption of this technology as a whole.

## **CONCLUSION**

Rackspace strives to balance the understandable demand for privacy that comes from our customers with the equally understandable need of law enforcement to conduct investigations and ensure public safety. Even without other challenges, this balance is not always easy to affect. When one adds in the confusion created by the ECPA's failure to keep pace with technology, and this balance is nearly impossible to maintain.

Whatever changes are made to the ECPA, it is critical that any reform of the ECPA be made “technology neutral” so that future advances in technology do not again result in a statute which has become outdated in light of the technology of the day.

I thank you for the opportunity to share this information with you on behalf of Rackspace, and thank you for your efforts and time in addressing this matter.