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VIA ELECTRONIC SUBMISSION

October 17, 2016

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Reply Comments, Response to Initial Regulatory Flexibility Analysis; Protecting the Privacy of Customers of Broadband and Other Telecommunications Services, WC Docket No. 16-106.

Dear Ms. Dortch:

On October 13, 2016, James Talbot, Jeff Brueggeman, and the undersigned from AT&T met with Nick Degani, of Commissioner Pai's office to discuss the Commission's broadband privacy proceeding. During the meeting, we discussed comments filed in the proceeding by AT&T and others as reflected in the attached presentation.

Sincerely,

A handwritten signature in black ink that reads "Jacquelyne Flemming". The signature is written in a cursive, flowing style.

Attachment

Cc: Matt DelNero
Lisa Hone

Proposed Broadband Privacy Rules

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AT&T

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Overview

- ❑ For 20 years, the FTC has enforced a flexible online privacy regime that is technology-neutral and targets *harmful* practices but does not undermine the enormous *benefits* of data for the modern economy.
- ❑ The FTC’s comments recommended that the FCC modify its proposal to reflect a sensitivity-based approach to privacy choices in this proceeding
- ❑ The revised rules move closer to the FTC’s sensitivity-based approach, but there are several significant inconsistencies:
 - ❖ The FCC should allow inferred consent for first-party uses of non-sensitive information, such as marketing and internal data analytics.
 - ❖ The FCC should use the FTC’s definition of “sensitive information” and avoid categorizing all web browsing and app data as sensitive.

First-Party Marketing

- ❑ The FTC and the White House privacy framework do not require customer consent (even opt-out) for first-party marketing that does not involve sensitive information.
- ❑ As proposed, ISPs would be required to obtain customer consent to use their information to market service bundles .
- ❑ At a minimum, the FCC should allow a broadband provider to use customer contact information (e.g., name, address, telephone number, and email address) to market its own or its affiliates' services without customer approval. This information is not CPNI under Section 222, is not sensitive, and reveals nothing about a customer's services.
- ❑ Section 222 also does not prevent the FCC from permitting ISPs to use information that does qualify as CPNI to market many of their own products and services based on inferred consent. The FCC should align its rules with the FTC's finding that "most first-party marketing practices are consistent with the consumer's relationship with the business and thus do not necessitate consumer choice."
- ❑ The FCC also should apply to wireless ISPs the existing rule allowing the use of wireless CPNI to market CPE and information services without customer approval.

Use of Web Browsing and App Data

- ❑ The FCC should maintain consistency with the FTC’s technology-neutral definition of “sensitive information.”
 - ❖ FTC’s comments define sensitive information as: (1) content of communications; and (2) Social Security Numbers or health, financial, children’s, or precise geolocation data.
 - ❖ FTC has never categorized all web browsing and app data as sensitive.
- ❑ ISPs have operationalized the sensitivity-based approach the same way as other companies -- by limiting the uses of sensitive information and analyzing web browsing and app activity based on standard industry marketing categories (e.g., sports lover).
- ❑ Applying inconsistent privacy rules to the same web browsing and app data would create false consumer expectations and distort competition.
- ❑ The FCC has ample authority under Section 222 to adopt the FTC’s flexible sensitivity-based approach to the use of web browsing and app data.

De-Identified Data

- ❑ Businesses, research institutions, and governmental bodies use AT&T de-identified data to produce enormous social and economic benefits.
 - ❖ De-identified data is data that is not reasonably linkable to a specific individual.
 - ❖ No approval required to use, disclose, and permit access to de-identified data if the provider:
 - ❖ Determines that the de-identified data is not reasonably linkable to a specific individual; and
 - ❖ Takes reasonable steps to prevent any third-party permitted to access the de-identified data, or to whom such data is disclosed, from attempting to re-identify such data

Implementation

- ❑ AT&T would need 12-18 months to implement these new requirements
- ❑ To implement these new rules, ISPs will need to :
 - ❖ perform an assessment of their existing processes and systems to determine what changes must be made;
 - ❖ review, update, and negotiate supplier and other contracts; update written requirements documents;
 - ❖ research, design, code, and test updates to customer care, self-serve, and back-office applications and systems;
 - ❖ train employees and suppliers;
 - ❖ draft customer communications;
 - ❖ develop notice methods and periods; and set up a system for ensuring ongoing compliance
- ❑ At least 2-3 months will be needed to evaluate the system and process updates needed to comply with the new rules
- ❑ If customer is defined as a current or former paying or non-paying subscriber or “an applicant” for broadband Internet access service, this will further complicate implementation.

Other issues

- The rules should only apply to information that is reasonably linkable to a person or device. (e.g., an IP address may not be linkable to a person because it is constantly reassigned).
- The rules should be clear that ISPs are not required to obtain consent to conduct internal market research or product development