



Oct. 20, 2016

Tom Wheeler  
Chairman

Mignon Clyburn  
Commissioner

Michael O'Rielly  
Commissioner

Ajit Pai  
Commissioner

Jessica Rosenworcel  
Commissioner

Federal Communications Commission  
445 12th St. SW  
Washington, DC 20554

Re: Protecting the Privacy of Customers of Broadband and Other  
Telecommunications Services, WC Docket No. 16-106

Dear Chairman Wheeler and Commissioners:

As you approach the date to vote on the final order referenced above, Color of Change urges you to take a strong stance on broadband privacy, help improve the proposed rules, and vote in favor of protections for all Internet users and for those communities most vulnerable to data collection and predatory schemes.

Black people, communities of color, children, and low-income communities are particularly vulnerable to data collection

To Black folks, communities of color, and low-income communities, our smartphones, computers, and access to the Internet are the ways we connect. We use these tools to start movements for social justice, laugh with our families, broadcast our most frightening moments and seek support. So much so, that segments of the Black population are well above the national average for adoption of broadband service in the home- 86% of African Americans ages 18-29 are home broadband adopters, as are 88% of Black college graduates.<sup>1</sup>

Our communities trust that when we go online, at home or on mobile devices, we can count on our privacy and on the safety of our personal information. But the same broadband providers we rely on for connection currently have unprecedented access to our data and information; and that same data collected leads to discriminatory practices by corporations that start targeting children and aim to last throughout their lives.<sup>2</sup>

We've seen shameless targeting of low-income communities by predatory payday loan companies that make billions of dollars in interest and fees on the backs of struggling families.<sup>3</sup> We've seen companies deliberately marketing unhealthy junk food to our Black children, while at the same time advertising healthy snacks to white kids.<sup>4</sup> Finally, we've seen online price gauging and digital redlining, where

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<sup>1</sup> Smith, Aaron. *African Americans and Technology Use; A Demographic Portrait*. Pew Research Center. January 6, 2014. <http://www.pewinternet.org/2014/01/06/african-americans-and-technology-use/>

<sup>2</sup> Watrous, Monica. "Three trends shaping children's food industry." Food Business News, April 29, 2016.   
<sup>3</sup> Upturn. *Led Astray; Online Lead Generation and Payday Loans*, October 2015, <https://www.teamupturn.com/reports/2015/led-astray>

<sup>4</sup> Harris-Lovett, Sasha. "Junk food ads on TV tend to target African American and Latino youth." Los Angeles Times, August 13, 2015.

corporations like Staples have used geo-tracking and personal data to charge customers of color higher prices for products based solely on their geography.<sup>5</sup>

#### Data points do not exist or operate in a vacuum

Even if some information may feel innocuous, data that is collected can easily become a proxy for protected class information and quickly break down the current division of sensitive and non-sensitive information, as it exists in the Commissioner's proposal. In the realm of car insurance discounts, Auto Insurance Telematics Devices collect what would be considered "non-sensitive" data- such as vehicle speed, the time of day someone is driving, the miles driven, and the rates of acceleration and braking. These devices do not collect "sensitive" data- such as location or the driver's identity.<sup>6</sup> By measuring "non-sensitive" data like the time of day a person is driving, car insurance companies can be engaged in pricing discrimination against individuals who work night shifts and tend to be of lower socioeconomic status and members of communities of color<sup>7</sup> - information that is considered apart of a protected class.

Data does not exist or operate in a vacuum. The speed and resources made available by the very nature of broadband mean that one data point is no longer used by itself. In the broadband context, data collection is not just about a singular person, but also about creating a model of a broader coalition of similar individuals.

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<sup>5</sup> Valentino-Devries, Jennifer, Singer-Vine, Jeremy, and Solanti, Ashkan. "Websites Vary Prices, Deals Based on Users' Information." *The Wall Street Journal*, December 24, 2012.

<sup>6</sup> Peppet, Scott R., *Regulating the Internet of Things: First Steps Toward Managing Discrimination, Privacy, Security & Consent* (March 1, 2014). *Texas Law Review*, Forthcoming. Available at SSRN:<http://ssrn.com/abstract=2409074>

<sup>7</sup> Saenz, Rogelio, *A Demographic Profile of U.S. Workers Around the Clock*, accessed online at <http://www.prb.org/Publications/Articles/2008/workingaroundtheclock.aspx>, on Sept. 29, 2016.

## Black folks, and communities of color tend to have a thick file of data collection

By the nature of the Black American experience, individuals belonging to that class tend to have extensive amounts of identifying data publicly available. This sheer volume of data creates even larger public databases from which seemingly anonymized data can be re-identified.

Even data that is purged of data points typically considered to be personally identifying, but with the data largely left intact, can easily be re-identified. To illustrate, computer science professor Latanya Sweeney conducted a study using census data, and found that she could identify 87% of the United States population using simply zip code, birth date, and gender.<sup>8</sup>

This digital context quickly lends itself to marketing and advertising schemes that exist to target specific demographics based on assumptions made and collected about a larger group. Due to the amount of de-identified data available, and speeds of processing afforded because of broadband, companies are easily able to create models that lay the groundwork for predatory advertising and marketing by third parties.

## We must keep the Internet safe, open, secure, and accessible

Alternatives to outright data collection have been put forward by broadband providers, namely, “pay for privacy” options. However, these just further victimize low-income people and communities of color by making basic privacy rights a luxury. They also inevitably create a two-tiered system of data privacy protection that is based upon those who can afford to pay and that leave behind those who cannot.

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<sup>8</sup> Latanya Sweeney, *k-anonymity: A Model for Protecting Privacy*, *International Journal on Uncertainty, Fuzziness and Knowledge-based Systems*, 10(5), 2002; 557-570.

While Color of Change commends the Commissioner's fact sheet for prohibiting "take-it-or-leave-it" offers, we are concerned with the opt-in allowance made for financial incentive schemes even with the requirement of heightened disclosure and recommend the FCC outright prohibits these schemes as well. With the median income of Black households in 2015 being \$36,898,<sup>9</sup> consent conditioned on an unaffordable premium is not consent at all. And for those individuals with little to no discretionary income, these schemes can be unreasonable no matter the cost.

### Conclusion

Our communities need strong privacy rules. The FCC must ensure that communities of color cannot be extorted into giving up personal information in exchange for Internet access. The FCC must also ensure that our information remains private and protected from peering eyes and predatory schemes. The space our communities have claimed online is much too valuable in this moment and in this movement. The FCC must improve and vote to adopt Commissioner Wheeler's framework for broadband privacy.

Respectfully submitted,

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<sup>9</sup> Proctor, Bernadette D. and DeNavas-Walt, Carmen, *Income and Poverty in the United States: 2015*,  
<https://www.census.gov/content/dam/Census/library/publications/2016/demo/p60-256.pdf>