October 20, 2016

Via ECFS

Marlene H. Dortch
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20554

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

Dear Ms. Dortch:

Cox Communications Inc. files this letter to help the Commission understand how its proposal to restrict broadband service providers’ communications with their customers would negatively impact both broadband providers and their customers, and to urge the Commission to follow the Federal Trade Commission’s guidance with respect to first-party marketing. Cox strongly believes that a requirement to allow customers to opt-out of all forms of first-party marketing would constrain our ability to offer customers the services – and the value – they have come to expect.

Requiring opt-out consent for first-party marketing is not consistent with consumer expectations, is inconsistent with other privacy frameworks, and does not benefit our customers.

Cox Communications is more than just a broadband communications company – we are a technology company that provides our customers with Internet, voice and video services and related products, as well as new, innovative products such as “Cox Homelife,” a personalized home automation and security system. Our products and services not only directly compete with other telecommunications companies, but also with leading technology companies such as Google, Amazon and Apple. Cox is also a leader in customer satisfaction, earning a total of 33

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1 When we refer to first-party marketing throughout this letter, we refer to the practice of communicating with customers based on information they submit to us or information collected about them in the course of their interaction with us or our products and services. For example, first-party data includes information collected in a customer survey, when a customer registers for a service, their purchase history, website or application usage data (when obtained from our websites and applications), and customer service interactions. Such knowledge is fundamental to any business, let alone ISPs.

2 While the focus of our submission is not on the Commission’s legal authority to restrict first-party marketing in the ways it proposes, we acknowledge and agree with the arguments made and positions taken by AT&T in Ex Parte letters dated October 4, 2016 and October 17, 2016.
awards from J.D. Power and Associates. As such, we feel confident when we say that in today’s
digital world, our customers not only expect to receive communications that keep them apprised
of promotions, discounts, bundling offers, and new product and service recommendations, they
also expect a more personalized, one-to-one relationship with us—a relationship that is achieved
primarily by first-party marketing.

Regulatory authorities and experts recognize first-party marketing is a wide-spread
practice and a well understood tool for establishing and maintaining these customer
relationships. 3 Both the FTC and the White House privacy frameworks specifically recognize
this commonly accepted practice and permit companies to use customer data to communicate
with their customers and personalize their customers’ experience based on the customer’s
implied consent in most instances.4 Even existing FCC CPNI rules permit carriers to use CPNI
to engage in some first-party marketing, without customer approval.5 Regulating such activities
here would be unprecedented and would not reflect customers’ current expectations of their
broadband providers: to anticipate what they want and when they want it, to provide maximum
value, and then tell them about it.

Under the Commission’s proposed rules, as we understand them from the Fact Sheet, the
FCC would require Cox to allow customers to opt out of all first-party marketing that uses
customer data, including direct mail, information printed on or included in customer bills, or
advertisements on our own websites and applications. Instead of conducting business like a
modern-day technology company, Cox and other ISPs would be relegated to communicating
with a subset of customers through generic advertisements placed through generic advertising
channels, such as billboards and print ads. This does not benefit customers, who would

3 In June 2015, marketers surveyed by Econsultancy and Signal reported that the most valuable data to
them was first-party data. Econsultancy and Signal Survey: Douglas Karr, The Marketing Impact of First-
Party versus Third-Party Data, MARKETING TECH BLOG (June 23, 2015),
https://marketingtechblog.com/first-party-roi/. This finding was supported by a January 2015 Forrester
Consulting survey. Forrester Survey: eMarketer, Marketers Put First-Party Data First (June 29, 2015),
http://www.emarketer.com/Article/Marketers-Put-First-Party-Data-First/1012663.

4 Federal Trade Commission, Protecting Consumer Privacy in an Era of Rapid Change:
Recommendations for Businesses and Policymakers at 40 (Mar. 2012),
https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-report-protecting-
consumer-privacy-era-rapid-change-recommendations/120326privacyreport.pdf (“[M]ost first-party
marketing practices are consistent with the consumer’s relationship with the business and thus do not
necessitate consumer choice”); The White House, Consumer Data Privacy in a Networked World: A
Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy at 16-17
consent to use personal data to conduct marketing in the context of most first-party relationships, given
the familiarity of this activity in digital and in-person commerce, the visibility of this kind of marketing,
the presence of an easily identifiable party to contact to provide feedback, and consumers’ opportunity to
der end their relationship with a company if they are dissatisfied with it.”).

5 Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of
Customer Proprietary Network Information, Order on Reconsideration and Petitions for Forbearance, 14
otherwise receive information about potential savings or new products and services through non-intrusive first-party marketing efforts.

Nor does this benefit our business. As Cox strives to innovate and compete with other technology companies, this type of restriction would only serve to further an antiquated image of an old cable company. As the new entrant into new “Internet of Things” products and services provided through our home automation product, it would put us at a competitive disadvantage in the marketplace. If Cox and other broadband service providers cannot market new products and services on the same terms as online companies – or even other brick and mortar businesses – there will be less incentive to invest and develop new services. In contrast, allowing broadband providers the ability to market and develop relationships with their customers under the same rules as other companies will create competition, increase consumer choice and satisfaction, and lower costs – to the benefit of our business, as well as our customers.

Some first-party marketing would still be subject to consumer choice.

Cox respects the choices our customers make about the ways in which they would like us to communicate with them. Our goal is to provide the right offer to the right customer in the right way at the right time. Therefore, we already offer our customers the ability to opt-out of many types of first-party marketing. As required by law, we offer customers the ability to opt out of email marketing pursuant to CAN-SPAM, and to opt out of telemarketing and texts pursuant to the do-not-call requirements of the Telephone Consumer Protection Act. In compliance with the Digital Advertising Alliance’s self-regulatory program and pursuant to FTC guidance, we also allow customers to opt-out of our marketing if it involves tracking a customer’s activity across unaffiliated third party websites or applications. While we do not currently use a customer’s sensitive information for marketing or advertising purposes, in the unlikely event we wanted to do that in the future, we would obtain our customers’ opt-in consent prior to any such use. We also voluntarily honor a customer’s request to suppress their name and address from some of our direct mail activities.

In each of the above examples where an opt-out is offered, the channel in which the targeted marketing is received could potentially be considered intrusive by the customer: an email or text that requires a customer to take an action to delete it; a phone call that requires a customer to take action to answer it; an online advertisement that tracks a customer’s activity when they are not dealing directly with our business, or even a postcard that requires an extra trip to the mailbox and ultimately the recycling bin. Our customers may have different individual preferences for how they would like us to communicate with them through these channels, and Cox already provides them with the tools to honor those preferences.

6 “Sensitive Information” has the meaning provided in the FTC report (health and financial information, information about children, Social Security numbers, and precise geolocation data). We do not consider all web-browsing history and app usage history to be “sensitive,” let alone that information from Cox websites and applications (See our October 20, 2016 Ex Parte letter submitted in conjunction with NCTA, Charter, and Comcast); if all web browsing and app usage is included in “sensitive” category, we would be required to obtain a customer’s opt-in consent for our first-party digital marketing efforts, further exacerbating our competitive disadvantage vis-à-vis other online providers.
Other types of first-party marketing, however, are passive, and provide the customer with relevant information and a personalized experience without requiring the customer to take any additional action. For instance, when we serve a personalized advertisement on our own website or application, it simply goes in the place where another advertisement would otherwise be. If a customer opted out of our first-party marketing, that customer would still see an advertisement for our products and services, but it is less likely to be relevant as a personalized offer would be replaced with a less relevant advertisement.

While we strongly disagree with any proposal that would adopt regulations restricting first-party marketing beyond what is already statutorily required and question the Commission’s legal authority to do so, to the extent such regulations are, in fact, adopted, we urge the Commission to specify that such opt-out requirements (1) can be made on a channel-by-channel basis; and (2) that existing opt-out mechanisms for the marketing channels described above fulfill those new opt-out requirements. Our customers may not want to opt out of all first-party marketing, and they should be able to choose the methods in which they want us to communicate with them. We believe a clear distinction can be made between these types of marketing activities and other passive marketing activities that would not result in the customer avoiding advertising altogether, but would simply result in less relevant advertising.

If you have any questions, please contact the undersigned.

Respectfully submitted,

Senior Vice President and General Counsel

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