

October 21, 2016

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

Re: Broadband Privacy NPRM, WC Docket No. 16-106

Dear Ms. Dortch:

On October 17, 2016, Emmett O'Keefe of the DMA, Dave Grimaldi of the IAB, Peter Kosmala of the 4A's, Clark Rector of the AAF, Keith Scarborough of the ANA, and Mike Signorelli and Rob Hartwell of the law firm Venable LLP, met with Commissioner Jessica Rosenworcel and Travis Litman, Senior Legal Advisor.¹

During this meeting, the participants discussed the Federal Communications Commission's ("FCC") Notice of Proposed Rulemaking ("NPRM") regarding broadband privacy, as well as the recently released Fact Sheet from Chairman Wheeler's office. The parties discussed the Fact Sheet's definition for the term "sensitive information." The parties discussed how the Fact Sheet's sensitive information definition diverges from the Federal Trade Commission's ("FTC") privacy framework by including web browsing and application use information in the sensitive data category, and discussed the approach proposed by the parties, which would categorize web browsing and application use history information as non-sensitive and subject the use of that data to a requirement to provide "clear, meaningful, and prominent notice that permits the customer to take action to opt-out" of its use, similar to existing industry self-regulatory standards developed by the Digital Advertising Alliance ("DAA").² The participants also expressed concern, as stated in their letter to the FCC of October 10, 2016, that the record does not support the proposed approach to sensitive information.³ They noted that the proposal was not included in the FCC's earlier proposed Order that was released for comment, and the FCC has not released the text of the new approach for public review and comment. This process is insufficient in light of the significant impact and unprecedented nature of the proposed approach to regulating online data. The parties stated that additional time should be provided for the public to comment on and consider the proposal.

The participants responded to a question from the Commissioner about how companies are able to operationalize the use of non-sensitive web browsing and application use information

¹ This disclosure is made in compliance with 47 C.F.R. § 1.1206.

² Trade Associations, *Trade Association Proposal Regarding Sensitive Information and Consent Standard*, 2-3 (Oct. 19, 2016)
<https://ecfsapi.fcc.gov/file/10190452917503/Trade%20Association%20Proposal%20Regarding%20Sensitive%20Information%20and%20Consent%20Standard.pdf>.

³ Trade Associations, *Ex Parte: Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106 (Oct. 10, 2016)
<https://ecfsapi.fcc.gov/file/1010145590290/Trade%20Association%20Letter%20to%20FCC.pdf>.

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from sensitive web browsing and application use information. The parties explained that companies across the Internet, including ISPs, have for decades used a combination of administrative and technical controls to limit the use of sensitive data for marketing and advertising purposes, absent consumer consent. These practices were developed to comply with the FTC's privacy framework and the self-regulatory program administered by the DAA.⁴ For example, major advertising networks, web portals, and Internet research firms that see a significant volume of consumer web browsing history and application use history information developed filters that achieve compliance with the proposal set forth in the participants' letter of October 19, 2016.⁵

As with other FCC rules where the Commission sets a standard to be applied across industry, it will be up to the covered companies to implement, operate, and demonstrate compliance. When companies are unable to operationalize feasible compliance with a proposed rule, companies let the FCC know that. In this case, the parties are confident that companies are able to operationalize the proposal, and achieve the desired result. The Commission could also issue a Further Notice of Proposed Rule Making to further study the proposal, and build a more detailed record regarding operationalizing filtering systems.

Sincerely,

/s/ Mike Signorelli

Cc: Travis Litman

⁴ See IAB, *IAB Tech Lab Content Taxonomy* (2015) <https://www.iab.com/guidelines/iab-quality-assurance-guidelines-qag-taxonomy/>.

⁵ Trade Associations, *Trade Association Proposal Regarding Sensitive Information and Consent Standard* (Oct. 19, 2016) <https://ecfsapi.fcc.gov/file/10190452917503/Trade%20Association%20Proposal%20Regarding%20Sensitive%20Information%20and%20Consent%20Standard.pdf>.