



POLICY & ACTION FROM CONSUMER REPORTS



Consumer Federation of America

March 6, 2017

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket No. 16-106

Protecting the Privacy of Customers of Broadband and Other Telecommunications Services

Opposition to Petitions for Reconsideration

Dear Sir or Madam:

Consumers Union, the policy and mobilization arm of Consumer Reports,¹ and the Consumer Federation of America² submits this opposition to the petitions for reconsideration of the Federal Communications Commission (FCC) broadband privacy Order. Specifically, we oppose the petitions for reconsideration that argue the Commission should fully repeal the Order. The record demonstrates the necessity of the Order, and therefore the Commission should retain the Order in its entirety.

As our organizations have noted in comments in support of the Commission's proposal to strengthen broadband privacy for consumers,³ fixed and mobile internet access is essential to the lives of a growing number of consumers. Consumers value their internet access, and 69% of Americans indicate that the lack of a home broadband connection would be a "major disadvantage to finding a job, getting health information, or accessing other key information."⁴

¹ Consumers Union is the policy and mobilization arm of Consumer Reports. Consumers Union is an expert, independent, nonprofit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. It conducts this work in the areas of telecommunications reform, as well as financial services reform, food and product safety, health care reform, and other areas. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit organization rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.

² The Consumer Federation of America is an association of more than 250 non-profit consumer groups that, since 1968, has sought to advance the consumer interest through research, education, and advocacy.

³ George Slover, *CU Comments to the FCC on Protecting the Privacy of Broadband Internet Customers*, CONSUMERS UNION (July 6, 2016), <https://consumersunion.org/research/cu-comments-to-the-fcc-on-protecting-the-privacy-of-broadband-internet-customers/>.

⁴ John B. Horrigan & Maeve Duggan, *Home Broadband 2015*, PEW RESEARCH CENTER (Dec. 21, 2015), <http://www.pewinternet.org/2015/12/21/home-broadband-2015/>.

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Due to the present and growing consumer dependency on internet access, the Commission should not repeal the Order or weaken the necessary protections contained within it. The Commission promptly and properly exercised its authority to ensure that effective protections apply to broadband internet access service (BIAS) providers in October 2016. The Commission should not dismantle, repeal, or weaken the Order. We support the Order and ask that the Commission act in the best interests of consumers by ensuring that individuals and their sensitive data are protected.

Before the internet was developed, consumers relied on the law to protect their privacy and the security of their correspondence through the mail, telegram, and telephone. Consumers should not have less privacy and security just because our systems of communication have evolved to include the internet. The Commission should retain the Order in its entirety. The Commission has authority under Section 222 and other sections of the Communications Act to ensure that consumers are protected when they use the internet to communicate with family, access health information, apply for jobs, and engage in all the other necessary activities that rely on internet access.

BROADBAND INTERNET ACCESS SERVICE PROVIDERS HAVE A UNIQUE, SWEEPING VIEW INTO CONSUMERS' DAILY ONLINE LIVES, AND CONSUMERS SHOULD KNOW, AND HAVE A SAY IN, WHO USES THEIR DATA AND HOW.

A BIAS provider has an intimate, all-encompassing picture window into its customers' behavior. In the course of handling packets of customer data, a BIAS provider can obtain extensive insight into its customers' lives, habits, interests, health issues, political views, finances, and much more—and can use the special access afforded to it as a provider of essential communications services to connect this information to a customer's name, address, and phone number, to amass a detailed and comprehensive picture that can be used to profile its customers in ways that are highly intrusive to customer privacy.

As data storage costs continue to shrink, there is less natural disincentive to stop BIAS providers from simply saving all data they transmit, amassing year upon year of wide-ranging intimate, personal, and sensitive information about millions and millions of captive broadband customers, and retaining it indefinitely. The magnitude of these vast data repositories accumulated by BIAS providers in their role as communications utilities is likely to only further mushroom with the onset of the Internet of Things.

In order for consumers to have meaningful choice and control over how a BIAS provider collects and uses the vast amounts of their personal information it has access to, it is important that the BIAS provider clearly and specifically discloses to consumers—in plain English—what information is to be collected and the ways it will be used. Some petitions for reconsideration reflect that consumers can be uninformed regarding privacy practices, including those of BIAS providers. In general, privacy policies are so opaque, complicated, and full of legalese that most consumers cannot understand them. As a result, even diligent consumers can be left without the ability to protect themselves. Petitioners attempt to use this difficulty as a reason the Commission should make fundamental changes to the Order. To the contrary, consumers need the necessary consumer privacy protections that the Order provides. When consumers are unable

to effectively protect themselves (because, for instance, BIAS providers write such complicated privacy policies that they are impossible to comprehend), then it is important that the Commission take an active role to better ensure that they can.

Consumers should have the ability to make their own informed decision about whether to permit each kind of collection and use. The Order provides for consumer notice and choice. The Commission should not make it harder for consumers to know what their BIAS provider knows about their daily online lives, by repealing or weakening the Order. The Order also provides consumers with mechanisms to control the extent to which they allow their BIAS provider to collect and share their personal information.

BROADBAND INTERNET ACCESS SERVICE PROVIDERS HAVE A UNIQUE, SWEEPING VIEW INTO CONSUMERS' DAILY ONLINE LIVES, AND SHOULD BE HELD TO A HIGHER STANDARD THAN EDGE PROVIDERS.

Some of the petitions for reconsideration compare BIAS provider activities to those of an edge provider, and argue that internet service providers are being unfairly held to a higher standard. As we have noted above and in our comments in support of the Commission's proposal to strengthen broadband privacy for consumers, BIAS providers have a different and far more intimate knowledge of a consumers' online activities, no matter which edge providers the consumer elects to visit.

To the extent that a BIAS provider is seeking to compete with other companies in providing other services over the internet, it is free to establish separate, independent affiliates that collect and use consumer information in the same manner as those other companies, subject to the same rules that apply to them. But to the extent that a BIAS company might seek a *competitive advantage* over edge providers or other internet-based companies, by virtue of its comprehensive gateway access to personal consumer information, that is but another important reason why consumer privacy protection rules for BIAS providers need to be strong. Consumers may very well prefer not to give their BIAS provider an insider advantage over competing companies in marketing these other services. And consumers should be in control of deciding that. The Order enables consumers to be in control of their data, and the Commission rightfully found that there is a need for the protections the Order contains.

CONTRARY TO THE ASSERTIONS OF BROADBAND INTERNET ACCESS SERVICE PROVIDERS, CONSUMERS DO CARE ABOUT THEIR ONLINE PRIVACY, AND WANT THE ABILITY TO CONTROL WHO USES THEIR DATA AND HOW.

The privacy protections in the Order are vital because consumers greatly value and care about their privacy. Consumers Union has heard from approximately 45 thousand consumers who signed our petition in support of the rule, and has received approximately 10 thousand consumer comments asking for this protection to be preserved. Additionally, 163 individuals tweeted their opposition to the Commission's decision to stay the data security requirements of the Order that were set to go into effect on March 2, 2017. And finally, on the day the opposition comments to the petitions for reconsideration were due, March 6, 2017, 1,841 individuals showed their support of the Order on social media and asked for the Commission to protect their online privacy.

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Consumers often take what steps they effectively can to protect themselves against collection, use, and disclosure of their data. Consumers have also altered their online activity based on fears that their data may be compromised.⁵ Most Americans do not believe that having to give up their personal information to get basic communications over broadband is a fair deal.⁶

Additionally, most consumers only have a choice of one or two high-speed broadband providers. This lack of competition means that consumers cannot necessarily avoid BIAS provider data policies simply by switching service providers. And most importantly, consumers wish that they had more privacy protections by default, and wish the government would help ensure those protections are met.⁷ The Order provides those protections for consumers.

CONCLUSION

The Order will provide vital consumer privacy protections that will help ensure consumers have choice, transparency, and security. There is no persuasive reason to reconsider the Order. In fact, there are many reasons, fully discussed in the record, that the Commission should retain the rule in its entirety. If the Commission repeals, weakens, or dismantles the rule, consumers will not have the privacy protections they desire and need—and should have a right to.

Respectfully submitted,

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⁵ Rafi Goldberg, *Lack of Trust in Internet Privacy and Security May Deter Economic and Other Online Activities*, NTIA (May 13, 2016), <https://www.ntia.doc.gov/blog/2016/lack-trust-internet-privacy-and-security-may-deter-economic-and-other-online-activities>.

⁶ Turow, Hennessy, Draper, “The Tradeoff Fallacy,” University of Pennsylvania (June 2015) available at https://www.asc.upenn.edu/sites/default/files/TradeoffFallacy_1.pdf.

⁷ OTI Reply Comments at 21-27 (explaining how consumers have grown skeptical of their privacy and desire more protections).