

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
 )  
Protecting the Privacy of Customers of Broadband ) WC Docket No. 16-106  
and Other Telecommunications Services )  
 )

To: The Commission

**REPLY COMMENTS OF T-MOBILE USA, INC.**

T-Mobile USA, Inc. (“T-Mobile”)<sup>1</sup> submits these reply comments to the Federal Communications Commission (“FCC” or “Commission”) in response to the Notice of Proposed Rulemaking (“NPRM”)<sup>2</sup> in the above-referenced proceeding.

T-Mobile respectfully submits that the record does not support the prescriptive regulatory approach proposed in the NPRM and, if adopted, the proposed rules would disrupt consumer expectations and competitive innovation without improving consumer privacy or security. As explained in our initial filing in this proceeding,<sup>3</sup> T-Mobile believes that privacy and security of consumer data is extremely important, and the best way to protect consumers is with a consistent privacy regime across the Internet that focuses on the sensitivity of customer data, rather than the entity that holds it. Indeed, there is broad-based support for this approach in the record from

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<sup>1</sup> T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

<sup>2</sup> *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Notice of Proposed Rulemaking, 31 FCC Rcd 2500 (2016) (“NPRM”).

<sup>3</sup> Comments of T-Mobile USA, Inc., WC Docket No. 16-106 (filed May 27, 2016) (“TMUS Comments”).

consumers,<sup>4</sup> consumer-focused organizations,<sup>5</sup> academics,<sup>6</sup> industry stakeholders,<sup>7</sup> and, significantly, from the Federal Trade Commission,<sup>8</sup> which has successfully regulated privacy in the Internet ecosystem for decades under its unfairness and deception authority.

Rather than addressing the range of issues raised in the record and in T-Mobile's original comments, T-Mobile focuses this reply on the FTC filing and respectfully urges the Commission

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<sup>4</sup> In a recent survey cited frequently in the initial round of comments on the NPRM, more than 83% of Internet users said that data protections should vary based on the data's sensitivity, not based on who holds that information. *See* Comments of Progressive Policy Institute, WC Docket No. 16-106 (filed May 27, 2016) (submitting recent survey by Public Opinion Strategies and Peter D. Hart).

<sup>5</sup> *See* Comments of Consumers' Research, WC Docket No. 16-106, at 13-17, 22 (filed May 27, 2016); *see also* Comments of NAACP et al., WC Docket No. 16-106, at 1-2 (filed May 26, 2016) (commenting that edge providers often have greater visibility into personal data, and that "any new Internet privacy regime can only be effective if it applies to all Internet companies that can collect online consumer data").

<sup>6</sup> *See, e.g.*, Tribe, Laurence H. and Massey, Jonathan S., The Federal Communications Commission's Proposed Broadband Privacy Rules Would Violate The First Amendment, at 1-2, 4 (May 27, 2016) (filed in WC Docket No. 16-106 by CTIA, National Cable & Telecommunications Association and the United States Telecom Association); Comments of The George Washington University Regulatory Studies Center, WC Docket No. 16-106, at 8-13 (filed May 27, 2016).

<sup>7</sup> *See, e.g.*, Comments of CTIA, WC Docket No. 16-106, at 96 (filed May 26, 2016) ("CTIA Comments"); Comments of Competitive Carriers Association, WC Docket No. 16-106, at 3-4, 13 (filed May 27, 2016) ("CCA Comments"); Comments of the Consumer Technology Association f/k/a the Consumer Electronics Association, WC Docket No. 16-106, at 9-11 (filed May 27, 2016); Comments of Verizon, WC Docket No. 16-106, at 2 (filed May 27, 2016).

<sup>8</sup> Comments of the Staff of the Bureau of Consumer Protection of the Federal Trade Commission, WC Docket No. 16-106, at 8, 21, 35 (filed May 27, 2016) ("FTC Comments"); Comments of FTC Commissioner Maureen Ohlhausen, WC Docket No. 16-106, at 1-2 (filed May 27, 2016).

to consider some of the FTC's key comments,<sup>9</sup> which provide support for the approach T-Mobile and others have recommended to the FCC.<sup>10</sup>

First, the FTC recognized that if the FCC's proposed rules were to be implemented, they "would impose a number of specific requirements on the provision of BIAS services that would not generally apply to other services that collect and use significant amounts of consumer data." The FTC further noted that "[t]his outcome is not optimal." In an apparent effort to modify the FCC's proposed rules so that they protect consumers more appropriately, the FTC recommended a number of changes, including:

- (1) Scope of Data Covered – The FCC's "proposal to include any data that is 'linkable' [to an individual] could unnecessarily limit the use of data that does not pose a risk to consumers. While almost any piece of data *could* be linked to a consumer, it is appropriate to consider whether such a link is practical or likely in light of current technology. FTC staff thus recommends that the definition of PII only include information that is 'reasonably' linkable to an individual."<sup>11</sup>
- (2) Sensitivity of Data/Consumer Choice – Opt-in consent should be required for use and sharing of contents of consumer communications and sensitive data; depending on the

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<sup>9</sup> While T-Mobile does not endorse the FTC's Comments in their entirety and may not agree with every detailed recommendation, at the heart of the FTC's proposal are key principles which T-Mobile believes should be fundamental to any privacy framework. We urge the Commission to consider those principles, which we highlight below.

<sup>10</sup> T-Mobile reiterates the concerns we and others raised during the initial comment period regarding the FCC's legal and constitutional limitations in this proceeding. *See* TMUS Comments at 16-44, 55 (raising legal and constitutional challenges, including the scope of data that legally can be covered by the FCC's CPNI rules in light of limitations posed by 47 U.S.C. § 222); CTIA Comments at 16-94; CCA Comments at 10-16. However, for purposes of this reply, we think it is most productive to recommend a path forward to the FCC in the event it chooses to proceed with this rulemaking.

<sup>11</sup> FTC Comments at 9 (emphasis in original). Again, T-Mobile reiterates that the FCC cannot legally apply its CPNI rules to PII pursuant to 47 U.S.C. § 222. However, should the FCC choose to proceed despite such limitations, it should at the very least consider the FTC's suggested modifications to the FCC's proposal to limit the scope of data covered.

use, opt-out or implied consent is sufficient for use and sharing of non-sensitive data.<sup>12</sup>

- (3) Data Security – The FCC should eschew the proposed “strict liability” standard and instead call for “BIAS providers to ‘ensure the *reasonable* security, confidentiality, and integrity” of customer data.<sup>13</sup>
- (4) Breach Notification – The FCC should narrow the set of data for which breach notification is required, and lengthen the proposed breach notification deadlines by “[r]equir[ing] breach notification to consumers between 30 and 60 days after discovery of the breach.”<sup>14</sup> Also, the FCC should include an exception to breach notification requirements for certain inadvertent, good-faith actions by company employees.<sup>15</sup>

CTIA’s Reply Comments flesh out the FTC’s Comments in more detail, and, in particular, we draw the Commission’s attention to Section I of CTIA’s Reply.<sup>16</sup> T-Mobile believes the above changes would be a step in the right direction toward creating a more consistent regime across the Internet ecosystem while safeguarding consumers’ sensitive data. However, T-Mobile reiterates the numerous additional concerns we have with the FCC’s proposed rules, including the scope of data covered by those rules.<sup>17</sup> Again, we respectfully urge the FCC to consider the unintended and harmful consequences of overly prescriptive and

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<sup>12</sup> FTC Comments at 15-16, 19-20, 35.

<sup>13</sup> *Id.* at 27-28 (emphasis in original).

<sup>14</sup> *Id.* at 32-33, 36

<sup>15</sup> *Id.* at 32. Although the good-faith exception recommended by the FTC would improve upon the FCC’s proposal and limit some of the NPRM’s unintended consequences, T-Mobile respectfully urges the FCC to adopt the approach we recommended in our initial comments, which focuses on intentionality and harm. *See* TMUS Comments at 50-52 (recommending that the trigger for breach notification require “intentional” unauthorized access and a likelihood of harm).

<sup>16</sup> *See* Reply Comments of CTIA, WC Docket No. 16-106, at 7-13 (filed July 6, 2016).

<sup>17</sup> *See generally* TMUS Comments.

inconsistent privacy rules, which ultimately would offer no additional benefit to consumers as compared to the approach recommended by T-Mobile, CTIA, and others, which is grounded on longstanding FTC principles.<sup>18</sup>

T-Mobile therefore urges the Commission to reconsider our proposal in its entirety in a manner consistent with our initial comments and reply.

Respectfully submitted,

/s/ Cathleen Massey

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<sup>18</sup> Earlier this year, CTIA, CCA and other trade associations recommended a framework to the FCC that is consistent with many of the principles espoused by the FTC in its recent comments. *See* Letter from Meredith Attwell Baker, President and CEO, CTIA, et al., to Tom Wheeler, Chairman, FCC (Mar. 1, 2016) (“Industry Framework”). T-Mobile continues to urge the FCC to adopt the Industry Framework if it proceeds with this rulemaking. *See* TMUS Comments at 24 n. 77.