

August 15, 2016

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Notice of ex parte meeting from Audience Partners, LLC
Protecting the Privacy of Customers of Broadband and Other
Telecommunications Services, WC Docket No. 16-106*

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules,¹ Audience Partners, LLC (Audience Partners) provides notice of an ex parte meeting on August 11, 2016. Jeff Dittus (CEO and Chairman of Audience Partners), Linda Montemayor (General Counsel and Chief Privacy Officer for Audience Partners), Jo-Ellyn Sakowitz Klein and the undersigned (both as counsel for Audience Partners), met with Scott Jordan (Chief Technology Officer (via teleconference)) and the following people from the Wireline Competition Bureau: Melissa Droller Kirkel (Asst. Division Chief, Competition Policy Division (via teleconference)), Sherwin Siy (Special Counsel, Competition Policy Division), and Bakira Middleton (Attorney Adviser, Competition Policy Division).

The purpose of the meeting was to discuss Audience Partners' comments and reply comments that were filed in response to the above captioned proceeding.² Consistent with those comments, Audience Partners reiterated its positions that an IP address alone is not sufficient to identify an individual, that IP addresses are public, carrier-assigned information that do not identify individuals, that IP addresses should not be treated as "customer personal information" (customer PI) and that the inclusion of IP addresses, particularly as personally identifiable information (PII), would create undue obstacles for companies like Audience Partners that have carefully crafted privacy-sensitive solutions that protect customer privacy while enabling commerce. Moreover, Audience Partners restated its position that the aggregated IP address lists on which its privacy-by-design solution relies are a practical example of the types of data that fit within the statutory "aggregate customer information" exemption, and should be clearly identified as such. While Audience Partners generally agrees with the four-pronged construct for implementing the aggregate customer information exemption, Audience Partners raised some modifications to ensure the proper balance is reached between privacy and commerce. Finally, Audience Partners urged the Commission to consider an exemption for non-commercial speech by political and non-profit organizations.³

Audience Partners explained that its digital advertising company was founded in 2008 by a group of engineers who were concerned about the invasiveness of advertising platforms that

¹ 47 C.F.R. § 1.1206.

² See Audience Partners comments and Audience Partners reply comments.

³ Audience Partners reply comments at 7-9.

relied on tracking, deep packet inspection, and other similar techniques to target advertising campaigns. They believed advertising could be done without compromising consumer privacy. The resulting technology is a privacy-by-design advertising platform that provides only an IP address to the ad server. The attached slide, which details the Audience Partners process, was provided to Commission staff. As Audience Partners explained, its doubleblind privacy® technology strips out timestamp, household street address, and any other identifying information. It does not use browsing history or track consumer location and it aggregates IP addresses to ensure there are no “lists of one.” Moreover, as Audience Partners clarified, its technology recognizes and honors persistent opt-out flags that BIAS providers associate with customer accounts at the household level and ensures that all flagged IP addresses are excluded from any current or future matched lists (and are also deleted from any prior matched lists). Audience Partners emphasized that their privacy-sensitive solution ensures that any opt-out exercised will remain effective across all devices accessing the Internet through that IP address.

As compared to other ad serving platforms that rely on more extensive amounts of personal information and more invasive tactics, Audience Partners stressed that its technology is a viable, commercial example of how consumer information can be used to provide targeted advertising in a way that is respectful of consumers’ privacy. Audience Partners encouraged the Commission to ensure that its resulting privacy regime promotes such privacy-by-design technologies and that the regime not be structured in a way that cedes online advertising to entities outside the scope of the Commission’s rule that would be able to continue invasive practices that are less respectful of consumer privacy.

Audience Partners expressed that a key element of developing a privacy regime that promotes privacy-by-design technologies such as Audience Partners' is to ensure that the list of data elements that constitute PII is developed, consistent with the Commission’s authority under section 222, to include only information that is linked or reasonably-linkable to an individual—and should therefore not include customer IP addresses which are not typically static and are not linkable to an individual.⁴ In the *BIAS Privacy NPRM*, the Commission proposes that “information is linked or linkable to an individual if it can be used on its own, in context, or in combination to identify an individual or to logically associate with other information about a specific individual.”⁵ 3

Partners and others have noted, it would be unreasonable for the Commission to consider information regularly provided to website operators as PII when that information does not identify an individual.⁸

The construction of the Commission’s proposed test for what is linked or reasonably linkable, which includes the conjunction “or,” means that regardless of whether IP address alone is sufficient to be linked or reasonably linkable to an individual, it is to be treated as PII. Audience Partners explained in the meeting that there is precedent in other privacy and data protection regimes for the stance that certain data elements on their own are insufficient to identify an individual and are outside the scope of the regime.⁹ For these reasons, Audience Partners encouraged the Commission staff to consider a more nuanced approach that would recognize that IP address alone is insufficient to identify an individual and should be excluded from PII unless combined with other information that allows the identification of an individual.

In response, Commission staff asked whether an opt-out regime would address Audience Partners’ concern regarding the inclusion of IP address as PII. Audience Partners noted that the *BIAS Privacy NPRM* proposes as its default an opt-in regime and only allows opt-out consent in very limited circumstances.¹⁰ Audience Partners did express a willingness to work with the Commission should the Commission decide to pursue an opt-out regime.

With regards to the statutory exception for aggregate customer information, Audience Partners expressed gene

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Audience Partners emphasized the importance of retaining the plain meaning and reasonable application of the term “aggregate customer information” from the statute, permitting use and disclosure of a conglomeration of data elements – like IP addresses – that are not linkable to individuals. Audience Partners noted that its comments referenced standard definitions of the terms “aggregate” and “collective” to demonstrate that those terms do not mean that all individual data elements must be eliminated.¹⁵ In fact, both definitions contemplate retention of individual elements and Audience Partners urged that the Commission’s policy should be as well.

With regards to prong two, which would require a public commitment to maintain and use the aggregate customer PI in a non-individually identifiable fashion, Audience Partners asked that the Commission make clear in its Order that this prong can be satisfied through inclusion of such assurances in the BIAS provider privacy policy, which as Audience Partners referenced in its comments, the Federal Trade Commission has noted “provides an important accountability function.”¹⁶

On prongs three and four, which would require each BIAS provider to “[c]ontractually prohibit[] any entity to which it discloses or permits access to the aggregate consumer PI from attempting to re-identify such information” and to “exercise[] reasonable monitoring” to ensure these contractual obligations are not violated, Audience Partners explained to Commission staff that its contracts with BIAS providers include clauses that prohibit attempts at re-identification. Audience Partners urged the Commission to ensure that these prongs strike an appropriate balance between the need for oversight to protect against privacy risks and burdens imposed on BIAS providers.

Finally, Audience Partners reiterated that the Commission’s Order should create an exception for non-commercial activities by political organizations and nonprofits, consistent with other consumer protection regimes such as CANSPAM, Do-Not-Call, and the TCPA. The Internet is an essential platform for political and societal discourse and the protection of First Amendment rights. Audience Partners noted the importance of tax-exempt, nonprofit, and political organizations play in facilitating that dialogue. Audience Partners, agreeing with the CCA, noted in its reply comments that the Commission’s proposal should clearly exempt providers when they use customer PI for non-commercial purposes or should otherwise provide an exemption for political speech and other non-commercial speech by political, nonprofit, and charitable organizations.

Please direct any questions to the undersigned.

Gregory W. Guice
Akin Gump Strauss, Mueller and Feld LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036
(202) 887-4565
Counsel for Audience Partners, LLC

¹⁵ Audience Partners comments at 20

¹⁶ Audience Partners comments at 18

Audience Partners Doubleblind Privacy Technique

Doubleblind Privacy Process Description

1. Audience Partners