



WASHINGTON BUREAU · NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

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March 23, 2016

Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: Broadband Privacy Rulemaking

Dear Chairman Wheeler:

I write to clarify and elaborate on the March 16th 2016 letter describing our organizations Civil Rights Principles for the Era of Big Data as the FCC considers new Internet privacy rules. Given the complexity and fragmentation of the digital ecosystem, we want to make clear that non-discrimination privacy protections should be applied broadly and uniformly across the Internet, rather than imposing one set of privacy obligations on some businesses while allowing others in the Internet ecosystem to engage in certain pernicious and often discriminatory practices that we have fought against since the inception of the civil rights movement.

As we stated in our March 16th letter, we have a strong interest in ensuring that any new privacy rules protect all communities, particularly those most vulnerable including low-income and communities of color, from discrimination in pricing, services, and opportunities based on automated decisions powered by Internet users' individual data. Thus we urge you and other government officials to work together to develop a uniform set of protections. Unilateral action by the FCC will be illusory unless the resultant rules apply in a nondiscriminatory manner throughout the Internet ecosystem.

We are concerned by suggestions that new Internet privacy rules should focus only on Internet Service Providers (ISPs). ISPs are important, but are not the only important actors in this ecosystem that have access to, or knowledge of, customers' online activities. Indeed, "edge" companies providing services and products online – such as social networks, search engines, ad networks, data brokers, browsers, operating systems, online retailers, and email providers – have the same or, in some cases even a greater ability to track and profile users across their many devices and platforms on the web.

When announcing your intention to move forward with privacy rulemaking, you noted that "consumers deserve increased choice, transparency, and security online," and we could not agree with you more. However, nothing in the proposed rule would apply to consumers' rights or protections more broadly in the ecosystem to include their

interactions with edge companies online. This creates the potential for gaping inconsistencies in digital privacy protections - gaps that leave consumers exposed and some non-discrimination concerns wholly unaddressed.

Given the comprehensive nature of the data profiles available to all Internet companies, any effort to consider a new privacy regime should apply to all Internet companies that can collect online consumer data - not just ISPs. Such an approach would be consistent with the principles laid out in the Administration's 2012 Privacy Report, which called for "simplifying and clarifying" the landscape by enacting consistent common protections and enforcement regimes across the digital ecosystem.

Applying civil rights protections to just some of the players in the internet ecosystem and not to others would not provide the comprehensive approach to non-discrimination our members and communities need and deserve. For example, we wouldn't accept rules against racially restrictive covenants in home sales but accept redlining in rentals. Indeed, a patchwork of inconsistent, uneven data protection regimes would leave our constituencies in the precarious position of being protected from privacy abuses and data discrimination in some online contexts, while leaving people of color – and all consumers for that matter – exposed in others. It would be shortsighted for federal policymakers to demand comprehensive civil rights protections from some players in the digital landscape, while asking for only second-class protections from others.

Due to the diversity of companies using online data in similar ways, we urge the FCC to launch a multi-stakeholder review process to fully examine the best practices that all Internet companies should follow to protect consumer privacy and prevent data-driven discrimination online. We note that the Obama Administration has long championed the value of such multi-stakeholder processes in the context of online privacy rules. While the FCC may lack jurisdiction to regulate all Internet companies, it – working with the NTIA --- does have the ability to lead this process, much like NTIA has already done, to develop a holistic set of privacy guidelines that could more effectively protect the civil rights of all Americans online. By bringing together members of the civil rights community, public interest groups and industry representatives, including both edge and network companies, the FCC can lead the development of a more comprehensive and effective policy framework that will better protect the privacy of all Americans.

Should you have any questions or comments on the NAACP position, please feel free to contact me at (202) 463-2940.

Sincerely,

A handwritten signature in black ink, appearing to read 'Hilary O. Shelton', written in a cursive style.

Hilary O. Shelton
Director, NAACP Washington Bureau &
Senior Vice President for Policy and Advocacy