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May 10, 2016

Ex Parte

Re: Protecting the Privacy of Broadband and Other Telecommunications Services, WC
Docket No. 16-106

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

Dear Ms. Dortch:

On May 6, 2016, Jim Halpert, Partner, DLA Piper, and I met with Ruth Milkman, Chief of Staff to the Chairman, and Matt DeI Nero, Bureau Chief for the Wireline Competition Bureau, to discuss the Commission's broadband privacy Notice of Proposed Rulemaking. We expressed our support for the FCC's effort to protect consumer privacy in the broadband market generally, and our agreement with elements of the proposal we view to be good policy. However, we expressed our concerns about portions of the proposed rule we believe would be problematic.

We discussed the NPRM's broad opt-in requirement for use and sharing of non-sensitive data by broadband providers. This proposal is inconsistent with other U.S. privacy regulation, and would reduce broadband providers' ability to compete in the market for online advertising. We discussed whether an opt-in requirement should apply only to sensitive customer data and deep packet inspection for marketing (and related) purposes.

We also discussed the proposal's prohibition on broadband providers offering discounted services in exchange for customer consent to greater collection and use of customer data. So long as broadband providers provide sufficient notice, consumers could instead have the ability to make informed choices about how they value their personal data. We noted that our positions are consistent with FTC practice and the 2012 FTC Privacy Report ("Protecting Consumer Privacy in an Era of Rapid Change").

Finally, we discussed the data breach notification and audit log provisions, which we believe could be made less burdensome while still providing strong protection of customers by limiting the proposed breach notice obligation to breaches of sensitive information and/or those

which pose a reasonable risk of harm to customers, and the audit log requirement to sensitive information.

Maintaining consistency of the privacy standards applied to broadband providers with standards that apply to the broad swath of the U.S. economy that is subject to FTC standards would protect consumer privacy while setting broadband providers on a level playing field to innovate and compete in the Internet ecosystem.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jon Leibowitz".

Jon Leibowitz

cc: Ruth Milkman, Chief of Staff to the Chairman
Matt DeNero, Bureau Chief for the Wireline Competition Bureau
Jim Halpert, Partner, DLA Piper