



May 26, 2016

The Honorable Thomas Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20054

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

Dear Chairman Wheeler:

We write to urge the Commission to work towards comprehensive, effective, uniform and evenhanded privacy regulations that treat consumer Internet data the same regardless of where, how, or by what type of company it is used.

As leaders in the long struggle for civil rights, we have a particular responsibility to ensure that any new privacy rules protect all Americans, including those most vulnerable such as low-income communities and people of color, from discrimination in pricing, services, and opportunities based on automated decisions powered by Internet users' individual data.

These risks are present throughout the Internet – including major concerns with so-called "edge" companies – such as social networks, search engines, ad networks, data brokers, browsers, operating systems, online retailers, and email providers – that offer the products and services that bring many online and encourage them to share vast amounts of information and data widely and freely.

For this reason, any new Internet privacy regime can only be effective if it applies to all Internet companies that can collect online consumer data. 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.

By contrast, rules covering only broadband providers would leave a gaping and illogical “online privacy hole” that will undermine their effectiveness. Broadband providers must be governed by fair, clear, and strict rules of the road regarding the collection and use of consumer data. But regulating only these providers and leaving the vast edge – including social media where the most intimate details of our lives are shared and shopping and banking platforms that have detailed access to our personal finances – would be deeply troubling and dangerous.

This is clearly an oversight, or jurisdictional challenge, that we urge the agency to find a way to address. You yourself made clear that this distorted and inconsistent approach to privacy online is an intentional policy choice, arguing when you announced the proposed new rules that “this is not regulating what we often refer to as the edge – meaning the online applications and services that you access over the Internet, like Twitter and Uber [T]his is about ISPs and only ISPs.”

We fundamentally question the idea that data about our personal movements, credit cards, and social connections available to many Silicon Valley companies is somehow less sensitive or worthy of protection than data available to broadband providers. Especially given the wealth of recent scholarship observing that edge companies which provide apps and services that track us across all our devices wherever we go often have greater visibility into our personal data than home providers that touch only a small fraction of our total activities online.¹

Applying civil rights protections to some of the players in the Internet ecosystem and not others does not provide the comprehensive approach to non-discrimination our members and communities need and deserve. 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.

Given 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. The Obama Administration has long championed the use of such

¹ Online Privacy and ISPs, Feb. 29, 2016.

multi-stakeholder processes in this context. While the FCC may lack jurisdiction to regulate all Internet companies, it – working with the FTC and the NTIA – does have the ability to lead such a process 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.

As united leaders of America’s civil rights community, we urge the FCC to re-evaluate this flawed plan to enact one-sided privacy regulations that fail to address many of the most pernicious and potentially discriminatory actions in the Internet ecosystem. And we stand ready to work with you as partners in a true multi-stakeholder process that could generate an effective, consistent, and evenhanded approach to consumer privacy online.

Sincerely,

Hilary Shelton
NAACP

Brent Wilkes
League of Latin American Citizens

Ebonie Riley
National Action Network

Steven J. Smith
Public Policy Institute & Media and Telecom Project

Ignacio Salazar
SER-Jobs for Progress National, Inc.

Melanie L. Campbell
National Coalition on Black Civic Participation