

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

A National Broadband Plan	)	GN Docket No. 09-51
For Our Future	)	
	)	
International Comparison and Survey	)	GN Docket No. 09-47
Requirements in the Broadband	)	
Data Improvement Act	)	
	)	
Inquiry Concerning the Deployment of	)	GN Docket No. 09-137
Advanced Telecommunications Capability	)	
to All Americans in a Reasonable and	)	
Timely Fashion, and Possible Steps to	)	
Accelerate such Deployment Pursuant to	)	
Section 706 of the Telecommunications	)	
Act of 1996, as amended by the Broadband	)	
Data Improvement Act	)	
	)	

**COMMENTS OF  
CHARTER COMMUNICATIONS  
ON NBP PUBLIC NOTICE #29**

Charter Communications hereby submits its comments in response to the Public Notice issued by the Commission in the above-captioned proceedings. Specifically, the Commission has sought comment on a number of privacy questions raised by the Center for Democracy and Technology concerning consumer expectations of privacy; developing technologies that protect privacy; data sensitivity; and governance of third-party applications.

**A. How to promote both consumer privacy and broadband affordability**

The Notice raises questions concerning consumer expectations of privacy and how service providers can best meet them. Charter is deeply committed to respecting privacy. We have operated under privacy laws that have applied to the cable industry for 25 years; designed privacy into our systems and processes; and even prosecuted cases to defend the privacy of our

customers.<sup>1</sup> In our experience, there is no single set of consumer privacy needs and expectations. They change with technology, time, education, and depend on the services with which consumers interact. Our experience and interactions with our customers reflect varying expectations of privacy from the use of email services to account management to general web browsing.

For example, consumers browsing the Internet now expect cookies. That expectation comes from experience, education and the appreciation for the benefits that cookies provide, such as the ability to save a name and password for a log-in page, or to save items in a shopping cart. The same evolution of consumer expectations is developing with advertising. For years consumers have taken advantage of the benefit of advertising support for services, from broadcast radio and television to Google's Gmail. Similarly, consumers expect the majority of online content to be free, or at least subsidized with advertising revenues.<sup>2</sup> Consumers stand to benefit even more as advertisers are able to use advanced forms of advertising that make use of cookies, advertising networks, or other means for addressing advertising to the expressed or inferred interests of the consumer. And advertisers are willing to pay much more when they are able to address their content to particular categories of consumers more likely to be interested in their products, thereby subsidizing content and consumer services.

One means of promoting the affordability of broadband services is to foster an environment in which service providers have flexibility to seek more revenue from sources other than subscribers, such as advertisers. By increasing the value of advertising to consumers and advertisers, individually addressable advertising helps to underwrite and lower the cost of

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<sup>1</sup> See, e.g., *Charter Commc'ns v. Recording Industry Ass'n of Am.*, 393 F.3d 771, *reh'g denied*, No. 03-3802, 2005 U.S. App. LEXIS 5599 (8th Cir. Apr. 6, 2005) (en banc).

<sup>2</sup> FTC Staff Report: *Self-Regulatory Principles For Online Behavioral Advertising: Tracking, Targeting, & Technology*, at 1, 6, 10 (Feb. 2009) (hereinafter "FTC Staff Report").

content, to underwrite the deployment of advanced digital networks, to meet advertisers' demands for greater accountability, to meet consumers' desire for more relevant and engaging advertising, and to support good content with smaller audiences. As audiences have been given more viewing and entertainment choices, viewing has become more segmented, and advertising has as well. Attention spans are growing shorter. Tolerance for long or irrelevant ads will diminish further as content goes mobile. Addressable technologies allow subscribers to waste less time viewing irrelevant ads, and empower them to make more accurate purchasing decisions in the marketplace.

Addressable ads also empower more businesses to compete by reaching their intended audiences. For example, in 2008, Travelocity ended its old way of displaying generic ads online, such as "Find low fares on Travelocity. Book now." By targeting messages based on visitors' most recent search activities, it was able to use fewer ad impressions to convert site visitors to purchasers, saw a 230% increase in bookings and a 651% increase in click-through rates—a clear consumer endorsement.<sup>3</sup>

By contrast, no party has presented compelling record evidence that significant numbers of consumers are deterred from using broadband because of concern over how their information might be used for advertising. We do not doubt that consumers responding to survey questions (generally asked without context) respond that privacy and security are important to them, but that does not translate into a specific reservation to use broadband because of information collected for use with advertising. In the study that Public Knowledge cited in its comments, a majority of respondents "agreed or strongly agreed that they prefer having free access to online

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<sup>3</sup> Rita Chang, *Travelocity Offers Hope in Evolution of Display Advertising*, Advertising Age, Oct. 26, 2009.

content that has advertising accompanying it (similar to television shows on commercial broadcasts) rather than having to pay for the content.<sup>4</sup>

Addressable advertising is part of the economic engine for the Internet, for Internet start-ups, and for broadband deployment and adoption. Participants in the broadband economy, federal agencies and public interest groups would best serve consumers by promoting a better understanding of these technologies and practices, rather than a suspicion of them. With experience, education and a growing appreciation for the benefits that these technologies and practices provide, coupled with appropriate notice, security and choice, consumers will be able to enjoy both reasonable privacy protections and the benefits of advanced advertising.

**B. There is no one size fits all privacy solution for all data or all uses**

The Notice poses a set of questions concerning regulatory models and best practices. In Charter’s experience, privacy laws and best practices are based on FTC Fair Information Practices, calling for notice, choice, security, and accountability— principles already embodied in Section 631 of the Cable Act. But there is no one size fits all solution for all data or all uses. For example, both health researchers and advanced advertising business models look to de-identification and anonymization techniques, but the precise techniques and level of protection varies according to the sensitivity of the data being protected and its intended use, as has been well reported by the National Institute of Standards and Technology.<sup>5</sup> Likewise, what is “sensitive” and how it must be protected can vary. When the Federal Trade Commission reviewed advanced advertising issues last year, it did not attempt to define categorically what

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<sup>4</sup> Center for the Digital Future, Univ. of S. Cal., *Surveying the Digital Future: Survey Highlights*, Apr. 28, 2009, available at [www.digitalcenter.org/pdf/2009\\_Digital\\_Future\\_Project\\_Release\\_Highlights.pdf](http://www.digitalcenter.org/pdf/2009_Digital_Future_Project_Release_Highlights.pdf) (cited in Comments filed in Docket No. 09-51 by Public Knowledge et al., June 8, 2009, at 14 n.20).

<sup>5</sup> Erika McCallister et al., *Guide to Protecting the Confidentiality of Personally Identifiable Information (PII) (Draft) – Recommendations of the National Institute of Standards and Technology*, NIST Special Publication 800-122 (Draft) (Jan. 2009).

was sensitive, but noted that the appropriate of level of protection varies with sensitivity of the data.<sup>6</sup>

The tools for protection may also vary, depending on the information and context. For example, consumers expect sites to use encryption technologies when collecting passwords and financial information, but may expect that less-sensitive personal information, such as their online name, will remain open to the public on social networking sites or blogs. Yet a consumer would not expect even their name to be disclosed in certain contexts, such as searches for health information or memberships to adult services. To that end, Charter has built data security assessments into its review processes for each service launch or enhancement.

Retention periods should also vary. Charter and other cable operators already limit data retention, as required by the Cable Act, so that it is not retained when it is no longer needed for the legitimate purposes for which it was collected or by legal process. Moreover, many companies operate under written records management programs with retention schedules. However, some Internet businesses may be unaccustomed to such data practices, and may need guidance in this area. But CDT itself has said that it is unwise to adopt an arbitrary retention period cut off.<sup>7</sup> These are dynamic and subtle issues that do not lend themselves easily to quick or necessarily uniform fixes.

**C. All participants in the broadband experience—including advertisers, Internet sites, and search engines, as well as network providers—should be providing consumers with reasonable privacy protections**

Charter agrees that consumers must have trust for advertising to work. Consumers should have a clear understanding of privacy when they are online, without artificial distinctions between what is expected from an ISP, a search engine, or an online advertising network. To

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<sup>6</sup> FTC Staff Report at 42 (Feb. 2009).

<sup>7</sup> Center for Democracy & Technology, *Online Behavioral Advertising*, at 29-30 (Dec. 2009).

that end, all participants in the broadband ecosystem—including advertisers, Internet sites, and search engines, as well as network providers—should be providing consumers with the notice, choice, security, and accountability expected of responsible privacy practices. All participants need to offer consumer education drawing on the full range of technologies available to them, so that consumers will have meaningful information in advance with which to make informed choices. These can all be delivered in practical ways that do not undermine the use of advertising to support the affordability of broadband, if the protections are grounded in reason and thoughtfully developed, rather than shaped by a visceral suspicion of online advertising.

Cable operators already operate under extensive privacy constraints, but the Commission should encourage all participants in the on-line economy to commit to these principles of self-regulation. If legislation is required to draw in parties who operate outside of privacy requirements, the legislation should preserve a role for meaningful self-regulation in appropriate safe harbors. Any rules should be applied not only to broadband service providers but also to all Internet sites and applications that collect or have access to user information. Greater certainty will provide more confidence and protection to consumers and will enable service providers to deliver better and more affordable services to their customers.

**D. It is unsound policy to make platform providers responsible for third party applications**

The final set of questions posed by the Notice asks whether privacy might be promoted if any party that creates a “platform” that third parties may use—or engages in any kind of “vetting” of applications and providers—creates liability for the third parties’ practices. The answer is a resounding “No.” Such a policy would be unsound and contrary to law. Creating communications platforms that independent parties are able to use does not and should not automatically make the creator of the platform responsible for all those who use it. Nor should

any initial “vetting” of the applications. Broadcasters require advertiser substantiation, but they are not treated as publisher of the ad.<sup>8</sup> Congress specifically provided immunity to platform providers in the Communications Act and Copyright Act to help the Internet develop.<sup>9</sup> They even leave a role for ISPs to manage their platforms without becoming the publisher of all traffic that might flow through it.<sup>10</sup> Wikipedia created a platform to allow users to link to other web pages, but Wikipedia is not liable for the practices of sites linked from that platform. Even the Commission’s proposed net neutrality rules—with which Charter has many concerns—still contemplate distinguishing “lawful” content from malware. To impose liability on any platform provider, managed or unmanaged, reduces the likelihood that anyone will develop or offer that platform—managed or unmanaged. As Congress has found repeatedly, it is bad policy to undermine platforms by treating the platform provider as the publisher.

### **Conclusion**

These privacy matters raise complicated questions that are under comprehensive review by other government branches. The FTC has been holding workshops and roundtables, and engaging in a transparent iterative process with industry and consumer advocates. Multiple joint hearings have been held by the House Subcommittee on Communications, Technology and the Internet and the Subcommittee on Commerce, Trade and Consumer Protection. NIST has been studying anonymization techniques. We do not believe that all of the issues raised in the CDT letter can be thoughtfully studied, researched, and solved with the little comment time provided to participants or in the limited time remaining to prepare the National Broadband Plan.

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<sup>8</sup> See J. Astrachan, Law of Advertising § 45.03[1].

<sup>9</sup> Section 230 of the Communications Decency Act provides that “no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” 47 U.S.C. § 230(c)(1). The Digital Millennium Copyright Act also gives an Internet service provider extensive protection against liability for hosted content and content in transit. 15 U.S.C. § 512.

<sup>10</sup> 47 U.S.C. § 230(c)(2)(A).

We do believe that the Commission should recognize the link between consumer privacy and broadband affordability, and be an advocate for the guiding principle that privacy solutions should be crafted carefully to retain the economic engine for Internet, for Internet start-ups, and for network deployment and adoption, all of which will suffer if advertising is unreasonably constrained.

Respectfully submitted,

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