



December 11, 2012

***Via Electronic Filing***

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

**Re: Notice of Oral *Ex Parte* Communications, CC Docket No. 96-115**

Dear Ms. Dortch:

On December 7, 2012, Sarah Morris, Policy Counsel, and Benjamin Lennett, Policy Director of the New America Foundation's Open Technology Institute, met with Associate General Counsel Jennifer Tatel and Attorney-Advisor Douglas Klein from the Federal Communications Commission's Office of General Counsel; Chief Technology Officer Henning Schulzrinne; William Dever, chief of Wireline Competition Bureau's Competition Policy Division; and Melissa Kirkel, Tim Stelzig, and Kristine Fargotstein also from the Wireline Competition Bureau, to discuss the Commission's Consumer Proprietary Network Information (CPNI) proceeding in the above-referenced docket. This notice is submitted in compliance with Section 1.1206(b) of the Commission's Rules.

During the meeting, Ms. Morris and Mr. Lennett stressed that Congress identified CPNI as a specific class of data that required heightened protections based on the unique nature of the carrier-customer relationship. Indeed, Section 222 represents a clear area where an agency has the direct authority to protect consumer's privacy in an ecosystem where privacy protections are hindered by an inconsistent and sparse patchwork of regulation. In addition, contrary to the suggestion of certain carriers<sup>1</sup>, the ongoing multistakeholder process at the NTIA does not deal directly with this specific issue or statutory provision.<sup>2</sup>

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<sup>1</sup> See e.g. Comments of AT&T, CC Docket No. 96-115 (July 12, 2012) at 10; Reply Comments of Verizon Wireless, CC Docket No. 96-115 (July 30, 2012) at 6.

<sup>2</sup> See e.g. a recent discussion draft from the NTIA's multistakeholder process, where CPNI was specifically noted as beyond the purview of the draft: "[t]his Code of Conduct does not apply to the extent that an entity's privacy policies on collection and use of data pertaining to consumers through Mobile Applications are regulated by federal or state privacy laws including ... the CPNI provision of the Communication Act ..." Available

Furthermore, the identified output for the NTIA process is a voluntary, potentially non-enforceable code of conduct that is explicitly focused on mobile application transparency writ large.<sup>3</sup>

Ms. Morris and Mr. Lennett then highlighted the need for more robust disclosure requirements for telecommunications providers with regard to the scope of data that they collect from users and the ways in which it is used and shared with third parties. Pointing to their initial and reply comments submitted in the proceeding earlier this summer and addressing comments at the meeting, they advised the Commission that carriers should disclose their CPNI collection practices (whether direct or via third party applications like Carrier IQ) to consumers and obtain explicit, opt-in consent for any data collection, use, and sharing that goes beyond the scope of collection articulated in 47 U.S.C. § 222(c) or (d). Carriers should further renew that notice and consent once every six months.<sup>4</sup>

This approach would benefit consumers by giving them more information about precisely what data is being collected, as well as more granular control over the types of uses of that data to which they consent. In addition, the renewal of that disclosure and consent would both remind users of existing consent and allow them to revise their preferences to reflect shifts in technology or personal norms.

Pursuant to the Commission's rules, this notice is being filed in the above-referenced dockets for inclusion in the public record.

Respectfully submitted,

/s/ Sarah J. Morris

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at the NTIA's website here:

[http://www.ntia.doc.gov/files/ntia/publications/combined\\_draft-mobile\\_transparency\\_code\\_of\\_conduct\\_11-29-12.pdf](http://www.ntia.doc.gov/files/ntia/publications/combined_draft-mobile_transparency_code_of_conduct_11-29-12.pdf).

<sup>3</sup> See generally: <http://www.ntia.doc.gov/other-publication/2012/privacy-multistakeholder-process-mobile-application-transparency>.

<sup>4</sup> Comments of New America Foundation's Open Technology Institute, et al, CC Docket No. 96-115 (July 13, 2012) at 11-12; Reply Comments of New America Foundation, et al, CC Docket No. 96-115 (July 30, 2012) at 9. OTI acknowledges that repeatedly obtaining opt-in consent every six months may present logistical challenges and are open to discussing the opt-in versus opt-out nature of the renewed consent, so long as the initial consent and disclosure regime used was opt-in with sufficiently clear disclosure.