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Via Electronic Filing

June 20, 2013

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, DC 20554

Re: *Comments Sought on Privacy and Security of Information Stored on Mobile Communications Devices*, DA 12-818; *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115

Dear Ms. Dortch:

This letter is to notify you that on June 18, 2013, Julie Kearney of the Consumer Electronics Association ("CEA") and Natalie Roisman and Nancy Libin of Wilkinson Barker Knauer, LLP, counsel to CEA, met with Alex Hoehn-Saric, policy director for Commissioner Jessica Rosenworcel. In addition, on June 19, 2013, Ms. Kearney, Laura Knapp Chadwick of CEA, and Ms. Roisman met separately with Louis Peraertz of Acting Chairwoman Mignon Clyburn's office; Nicholas Degani, Matthew Berry, and Bryan Cleveland of Commissioner Ajit Pai's office; and Sean Lev, Jennifer Tatel, and Douglas Klein of the Office of General Counsel. The purpose of these meetings was to discuss the interest of CEA's members in the above-referenced proceeding and certain concerns from the manufacturer perspective, as explained in more detail below.

As CEA explained in its comments in this proceeding last year,[1] consumer electronics manufacturers, including manufacturers of mobile devices, software developers, and operating

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[1] *Comments Sought on Privacy and Security of Information Stored on Mobile Communications Devices*, Public Notice, CC Docket No. 96-115, DA 12-818 (May 25, 2012) ("*Notice*"); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Report and Order

system providers, deeply respect consumer privacy and employ numerous measures to protect such privacy.[2] Regardless of any regulatory requirement, manufacturers recognize that protection of consumer privacy is an important and necessary business practice – in the fiercely competitive technology market, consumers will not purchase a product or service if they do not trust the way it handles their data. Manufacturers thus consistently develop, implement, and enforce robust industry self-regulatory tools and apply best business practices in a variety of areas related to consumer privacy. Accordingly, while CEA applauds the thoughtful focus of Acting Chairwoman Clyburn and the Commission on this important consumer issue, the Commission need not broaden or otherwise alter its existing customer proprietary network information ("CPNI") rules to specifically address mobile devices.

The Commission, if it acts at all, must exercise only an appropriately circumscribed role in the area of consumer privacy. The Commission's authority under Section 222 of the Communications Act of 1934, as amended (the "Act"), is limited to defined information that is acquired in a specific manner by telecommunications carriers in their provision of telecommunications services. The Commission is not the appropriate government entity to consider broad questions of privacy on mobile devices, and if it issues a declaratory ruling in this proceeding, it should limit any such ruling to a high-level, narrow statement regarding applicability of the CPNI rules to carriers with respect to mobile devices.

It is not only unnecessary, but also premature for the Commission to move beyond this. The Commission should recognize that overbroad FCC regulations regarding privacy on mobile devices could have unintended consequences for consumers and for industry sectors, such as consumer electronics manufacturers, that are not covered under the scope of Section 222 and the FCC's CPNI authority. If the Commission chooses to address the question of CPNI on mobile devices beyond a narrow, high-level ruling, it should solicit further comment before doing so. CEA expects that such a record would demonstrate significant complexity and fluidity in the relationships between manufacturers and their carrier-customers. Manufacturers collaborate with carrier-customers and operating system licensors to design and build the functionality of mobile devices, including software and applications, and carriers necessarily are intimately involved in the design process to ensure that devices operate efficiently on their networks. Any specific action taken by the Commission could create unanticipated legal and business challenges for manufacturers that could not have been predicted based on the *Notice* and are not appropriate under the Commission's limited Section 222 authority. In a wireless apps ecosystem where information and advertising play a critical role, curbing manufacturers' access to data as an indirect result of broadened CPNI rules could have substantial practical consequences. As CTIA requests, the Commission should clearly limit the scope of its CPNI rules to CPNI that a carrier directed or caused to be on a mobile device and to which the carrier

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and Further Notice of Proposed Rulemaking, CC Docket No. 96-115, WC Docket No. 04-36, 22 FCC Rcd 6927 (2007).

[2] *See generally* Comments of the Consumer Electronics Association, DA 12-818, CC Docket No. 96-115 (filed July 13, 2012).

has access.[3] Any broader action could have a substantial adverse impact on entities outside the scope of FCC authority.

In particular, the Commission should not address in the declaratory ruling the treatment of consumer data that is collected on a device (including through pre-loaded apps or a native operating system) but is not used by the carrier. First, the Bureau-level *Notice* did not provide notice that the Commission would consider this question, and thus interested parties have not had sufficient opportunity to comment on it.[4] Moreover, the Commission should not treat data as CPNI if it is not used by the carrier, because information stored on the device that is collected or transmitted by applications or the mobile operating system is not "*made available to the carrier by the customer solely by virtue of the carrier-customer relationship*," as required under the statutory definition of CPNI.[5] Rather, such data is made available to third parties or the operating system provider *regardless* of the carrier-customer relationship.

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[3] *See* Letter from Krista Witanowski, CTIA, to Marlene H. Dortch, FCC, CC Docket No. 96-115 (filed June 19, 2013).

[4] Under the Administrative Procedure Act, agencies must provide notice of a proposed rulemaking that contains either the express terms or substance of the proposed rule or a description of the subjects and issues involved. 5 U.S.C. § 553(b). The final rule must be a "logical outgrowth" of the proposed rule and, if it is not, affected parties have been denied the reasonable opportunity to comment guaranteed under the Act. *See, e.g., City of Waukesha v. EPA*, 320 F.3d 228, 245 (D.C. Cir. 2003); *Council Tree Communs., Inc. v. FCC*, 619 F.3d 235, 249 (2010). The treatment of consumer data that is collected on a device, but not used by the carrier, was not reasonably foreseeable from the *Notice*. Therefore, parties have not had a sufficient opportunity to comment on it.

[5] *Id.* § 222(h)(1) (emphasis added).

Pursuant to Section 1.1206 of the Commission's rules,[6] this letter is being electronically filed with your office and a copy of this submission is being provided to the Commission staff in attendance at the meetings. Please let the undersigned know if you have any questions regarding this filing.

Respectfully submitted,

/s/ **Julie M. Kearney**

Julie M. Kearney
Vice President, Regulatory Affairs

cc: Louis Peraertz
Matthew Berry
Nicholas Degani
Alex Hoehn-Saric
Sean Lev
Jennifer Tatel
Douglas Klein
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[6] 47 C.F.R. § 1.1206.