

October 21, 2016

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

Re: Broadband Privacy NPRM, WC Docket No. 16-106

Dear Ms. Dortch:

On October 20, 2016, Emmett O'Keefe of the DMA, Dave Grimaldi of the IAB, Peter Kosmala of the 4A's, Clark Rector of the AAF, Keith Scarborough of the ANA, and Mike Signorelli and Rob Hartwell of the law firm Venable LLP, met with Commissioner Michal O'Rielly and Amy Bender, Legal Advisor, Wireline.¹

During this meeting, the participants discussed the Federal Communications Commission's ("FCC") Notice of Proposed Rulemaking ("NPRM") regarding broadband privacy, as well as the recently released Fact Sheet from Chairman Wheeler's office. The parties discussed how the Fact Sheet's sensitive information definition diverges from the Federal Trade Commission's ("FTC") privacy framework by including web browsing and application use information in the sensitive data category, and discussed the approach proposed by the parties, which would categorize web browsing and application use history information as non-sensitive and subject the use of that data to a requirement to provide "clear, meaningful, and prominent notice that permits the customer to take action to opt-out" of its use, similar to existing industry self-regulatory standards developed by the Digital Advertising Alliance ("DAA").²

The participants also expressed concern, as stated in their letter to the FCC of October 10, 2016, that the record does not support the approach to sensitive information set forth in the fact sheet.³ They noted that the proposal was not included in the FCC's earlier proposed Order that was released for comment, and the FCC has not released the text of the new approach for public review and comment. The parties stated that additional time should be provided for the public to comment on and consider the proposal.

Sincerely,

/s/ Rob Hartwell

¹ This disclosure is made in compliance with 47 C.F.R. § 1.1206.

² Trade Associations, *Trade Association Proposal Regarding Sensitive Information and Consent Standard*, 2-3 (Oct. 19, 2016)
<https://ecfsapi.fcc.gov/file/10190452917503/Trade%20Association%20Proposal%20Regarding%20Sensitive%20Information%20and%20Consent%20Standard.pdf>.

³ Trade Associations, *Ex Parte: Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106 (Oct. 10, 2016)
<https://ecfsapi.fcc.gov/file/1010145590290/Trade%20Association%20Letter%20to%20FCC.pdf>.

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Cc: Amy Bender

October 21, 2016

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

Re: Broadband Privacy NPRM, WC Docket No. 16-106

Dear Ms. Dortch:

On October 17, 2016, Emmett O'Keefe of the DMA, Dave Grimaldi of the IAB, Peter Kosmala of the 4A's, Clark Rector of the AAF, Keith Scarborough of the ANA, and Mike Signorelli and Rob Hartwell of the law firm Venable LLP, met with Commissioner Jessica Rosenworcel and Travis Litman, Senior Legal Advisor.¹

During this meeting, the participants discussed the Federal Communications Commission's ("FCC") Notice of Proposed Rulemaking ("NPRM") regarding broadband privacy, as well as the recently released Fact Sheet from Chairman Wheeler's office. The parties discussed the Fact Sheet's definition for the term "sensitive information." The parties discussed how the Fact Sheet's sensitive information definition diverges from the Federal Trade Commission's ("FTC") privacy framework by including web browsing and application use information in the sensitive data category, and discussed the approach proposed by the parties, which would categorize web browsing and application use history information as non-sensitive and subject the use of that data to a requirement to provide "clear, meaningful, and prominent notice that permits the customer to take action to opt-out" of its use, similar to existing industry self-regulatory standards developed by the Digital Advertising Alliance ("DAA").² The participants also expressed concern, as stated in their letter to the FCC of October 10, 2016, that the record does not support the proposed approach to sensitive information.³ They noted that the proposal was not included in the FCC's earlier proposed Order that was released for comment, and the FCC has not released the text of the new approach for public review and comment. This process is insufficient in light of the significant impact and unprecedented nature of the proposed approach to regulating online data. The parties stated that additional time should be provided for the public to comment on and consider the proposal.

The participants responded to a question from the Commissioner about how companies are able to operationalize the use of non-sensitive web browsing and application use information

¹ This disclosure is made in compliance with 47 C.F.R. § 1.1206.

² Trade Associations, *Trade Association Proposal Regarding Sensitive Information and Consent Standard*, 2-3 (Oct. 19, 2016)
<https://ecfsapi.fcc.gov/file/10190452917503/Trade%20Association%20Proposal%20Regarding%20Sensitive%20Information%20and%20Consent%20Standard.pdf>.

³ Trade Associations, *Ex Parte: Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106 (Oct. 10, 2016)
<https://ecfsapi.fcc.gov/file/1010145590290/Trade%20Association%20Letter%20to%20FCC.pdf>.

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September 30, 2016
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from sensitive web browsing and application use information. The parties explained that companies across the Internet, including ISPs, have for decades used a combination of administrative and technical controls to limit the use of sensitive data for marketing and advertising purposes, absent consumer consent. These practices were developed to comply with the FTC's privacy framework and the self-regulatory program administered by the DAA.⁴ For example, major advertising networks, web portals, and Internet research firms that see a significant volume of consumer web browsing history and application use history information developed filters that achieve compliance with the proposal set forth in the participants' letter of October 19, 2016.⁵

As with other FCC rules where the Commission sets a standard to be applied across industry, it will be up to the covered companies to implement, operate, and demonstrate compliance. When companies are unable to operationalize feasible compliance with a proposed rule, companies let the FCC know that. In this case, the parties are confident that companies are able to operationalize the proposal, and achieve the desired result. The Commission could also issue a Further Notice of Proposed Rule Making to further study the proposal, and build a more detailed record regarding operationalizing filtering systems.

Sincerely,

/s/ Mike Signorelli

Cc: Travis Litman

⁴ See IAB, *IAB Tech Lab Content Taxonomy* (2015) <https://www.iab.com/guidelines/iab-quality-assurance-guidelines-qag-taxonomy/>.

⁵ Trade Associations, *Trade Association Proposal Regarding Sensitive Information and Consent Standard* (Oct. 19, 2016) <https://ecfsapi.fcc.gov/file/10190452917503/Trade%20Association%20Proposal%20Regarding%20Sensitive%20Information%20and%20Consent%20Standard.pdf>.

October 24, 2016

Via Electronic Filing

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

**Ex Parte: Protecting the Privacy of Customers of Broadband and Other
Telecommunications Services, WC Docket No. 16-106**

Dear Secretary Dortch:

The American Association of Advertising Agencies (“4A’s”), American Advertising Federation (“AAF”), Association of National Advertisers (“ANA”), Direct Marketing Association (“DMA”), Interactive Advertising Bureau (“IAB”), and Network Advertising Initiative (“NAI”) provide these comments to the Federal Communications Commission (“Commission” or “FCC”) on its proceeding related to the privacy of broadband customers. We are the leading trade associations for advertising and marketing industries, collectively representing more than 5,000 U.S. corporations across the full spectrum of businesses that participate in and shape today’s media landscape.

The undersigned parties file this ex parte letter pursuant to 47 C.F.R. § 1.1206(b)(2)(iv) in response to the ex parte notice filed by Free Press.¹ Free Press’s presentation incorrectly presumes that broadband Internet access service (“BIAS”) providers can operationalize the standard we proposed in our October 19, 2016, notice of ex parte only by examining the content of a communication. This is flatly wrong. As noted in our October 21, 2016, notice of ex parte, companies across the Internet, for decades, have used a combination of administrative and technical controls to limit the use of sensitive data for marketing and advertising purposes.² These practices were developed to comply with the Federal Trade Commission’s privacy framework and the self-regulatory program administered by the Digital Advertising Alliance as described in the letter dated October 19, 2016.³ An example of how companies could do this is by using trusted third parties that would remove the BIAS provider’s own identifiers and associate the web browsing and application use history information provided to them by the BIAS provider with alternative identifiers that the BIAS provider could not reverse, thereby ensuring that the data could not be later re-identified. These approaches help ensure that data is

¹ Free Press, *Free Press Litman Oct 20 ex parte notification FINAL* (Oct. 22, 2016) <https://ecfsapi.fcc.gov/file/102250608414/Free%20Press%20Litman%20Oct%2020%20ex%20parte%20notification%20FINAL.pdf>.

² Trade Associations, *October 20 Ex Parte Broadband Privacy* (Oct. 21, 2016)

<https://ecfsapi.fcc.gov/file/1021676021319/October%2020%20Ex%20Parte%20Broadband%20Privacy.pdf>.

³ Trade Associations, *Trade Association Proposal Regarding Sensitive Information and Consent Standard* (Oct. 19, 2016) <https://ecfsapi.fcc.gov/file/10190452917503/Trade%20Association%20Proposal%20Regarding%20Sensitive%20Information%20and%20Consent%20Standard.pdf>.

accessible for the provision of beneficial services and advertising to consumers, while limiting the use of sensitive information. This and other examples cited in the record demonstrate approaches for operationalizing the requirements.

Adopting the approach described in our October 19, 2016, ex parte would help protect and fuel the Internet economy. Data-driven online commerce and advertising drive the growth of the Internet economy and deliver innovative tools and services embraced by consumers and businesses. The current online ecosystem subsidizes content and programming that consumers value, promotes innovation, and grows the economy.⁴ The continued health of this ecosystem depends on access to data. Restricting access to such data would adversely impact consumers. The undersigned associations are committed to responsible data practices, and support the adoption of the opt-out consent regime we proposed to preserve the value and innovation that data driven online advertising supports.

* * *

We appreciate the opportunity to submit these comments, and we look forward to working with the FCC on this important issue.

Respectfully submitted,

American Advertising Federation
American Association of Advertising Agencies
Association of National Advertisers
Direct Marketing Association
Interactive Advertising Bureau
Network Advertising Initiative

CC: Stuart Ingis, Venable LLP
Michael Signorelli, Venable LLP

⁴ A recent Zogby Analytics poll commissioned by the Digital Advertising Alliance (“DAA”) shows that consumers assign a value of almost \$1,200 a year to ad-supported online content. DAA, *Zogby Poll: Americans Say Free, Ad-Supported Online Services Worth \$1,200/Year; 85% Prefer Ad-Supported Internet to Paid*, PR Newswire (May 11, 2016 8:30 AM), <http://www.prnewswire.com/news-releases/zogby-poll--americans-say-free-ad-supported-online-services-worth-1200year-85-prefer-ad-supported-internet-to-paid-300266602.html>.