

May 27, 2015

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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

Dear Ms. Dortch:

The Computer & Communications Industry Association (“CCIA”) submits this letter to highlight the importance of the Federal Communications Commission’s (“the Commission” or “FCC”) limited assertion of jurisdiction in its Notice of Proposed Rulemaking (“NPRM”) on protecting the privacy of customers of broadband and other telecommunications services.¹ CCIA is encouraged that the Commission has not sought to extend its privacy oversight authority to providers of edge services, and urges the Commission to maintain this limitation in this and future proceedings.

The Commission’s determination to not include edge providers in the scope of the NPRM is appropriate for technical and legal reasons. At core, the Commission’s limitation is a direct result of the conclusions it reached in developing the *2015 Open Internet Order*.² As the Commission acknowledges, there are fundamental differences between the positions of providers of fixed broadband Internet access service (“BIAS”) and edge providers on the Internet, and in the relationships such ISPs and edge services have with their respective consumer bases.³

Fixed broadband providers effectively serve as gatekeepers to the wider Internet for their subscribers. Consumers are not able to readily switch between those residential ISPs, of which there may be a limited number in a given area. Because home broadband network access is necessary to reach destinations on the wider Internet, providers are thus in a comparatively unique position with respect to subscribers and their activities online. As the Commission further notes, by contrast, consumers can more easily switch between search engines, move from among competing websites and social networks, and select from a range of applications, all on a variety of devices, often with privacy protections as a differentiator between services.⁴ This element of consumer choice is a key characteristic of the edge ecosystem that is simply not available to subscribers of fixed broadband providers.

¹ Protecting the Privacy of Customers of Broadband and Other Telecommunications Services, *Notice of Proposed Rulemaking*, WC Docket No. 16-106 (rel. Apr. 1, 2016) [hereinafter “Broadband Privacy NPRM”].

² Protecting and Promoting the Open Internet, *Report and Order on Remand, Declaratory Ruling, and Order*, GN Docket No. 14-28 (rel. Feb. 2015).

³ Broadband Privacy NPRM at ¶ 4.

⁴ *Id.*

Providers of edge services are also subject to robust existing regulatory regimes to protect consumer privacy. The Federal Trade Commission (“FTC”) has broad enforcement authority under section 5 of the FTC Act, which prohibits “unfair or deceptive practice in or affecting commerce.”⁵ It uses that authority judiciously to enforce privacy promises that edge providers make to consumers and to ensure that they employ reasonable best practices in privacy and data security.⁶ The FCC has cited the FTC’s series of consent decrees under its section 5 authority as an example for the privacy rules it is proposing in the NPRM precisely because they are such an effective mechanism for addressing consumer privacy and security harms on the Internet.⁷ Complementing the FTC’s robust consumer protection powers over edge providers are the corresponding unfair and deceptive practices authorities enforced by state Attorneys General,⁸ and state laws like the California Online Privacy Protection Act⁹ and the Delaware Online Privacy and Protection Act.¹⁰

The FCC is correct to limit its authority in the Broadband Privacy NPRM to exclude providers of edge services. Fixed broadband providers and edge providers differ significantly in terms of their relationships with their respective customers and their positions on the Internet, along with the effective privacy regulatory regime already applicable to edge providers. CCIA therefore encourages the Commission to maintain this scope in promulgating its Final Rule and subsequent proceedings related to privacy enforcement.

Respectfully submitted,

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⁵ 15 U.S.C. § 45.

⁶ See *Enforcing Privacy Promises*, FED. TRADE COMM’N, <https://www.ftc.gov/news-events/media-resources/protecting-consumer-privacy/enforcing-privacy-promises> (last visited May 26, 2016).

⁷ Broadband Privacy NPRM at ¶ 4.

⁸ See Danielle Keats Citron, *Privacy Enforcement Pioneers: The Role of State Attorneys General in the Development of Privacy Law*, NOTRE DAME L. REV., (forthcoming 2016), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2733297.

⁹ Cal. Bus. & Prof. Code §§ 22575-79.

¹⁰ Del. Code Tit. 6 § 1201C.