

March 16, 2016

Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: Broadband Privacy Rulemaking

Dear Chairman Wheeler:

In the last two years, the civil rights community has begun analyzing the potential disproportionate impact of data collection and use practices on the constituencies we represent. In 2014, many of our organizations adopted the Civil Rights Principles for the Era of Big Data. The Principles marked the first instance where national civil rights groups have spoken out publicly on the impact of new digital technologies for communities of color, women, and other historically disadvantaged groups.¹

We understand the Commission may commence a rulemaking soon on the privacy obligations of broadband Internet access service providers (ISPs). As part of that rulemaking, we encourage the Commission to review the ways in which the use of collected data could have a disproportionate adverse impact on historically disadvantaged communities, develop rules consistent with the Civil Rights Principles for the Era of Big Data, and ensure that baseline privacy protections extend equally to all wireless and wireline broadband consumers, regardless of their income level.

The Commission should carefully examine the privacy interests of historically disadvantaged communities. Use of consumers' online information can have disproportionate negative effects on the communities that our organizations represent. As the White House has noted, data-driven scores generated for marketing purposes can be used in ways that affect "individuals' opportunities to find housing, forecast their job security, or estimate their health."² This can be a good thing when scores serve as the basis to provide individuals with access to important products and services that might otherwise not be available to them. But data-driven decision-making raises concerns when it serves as the basis for discrimination. For example, the White House explained in 2014 that using data to facilitate "perfect personalization' . . . leaves

¹ The Leadership Conference on Civil and Human Rights, *Civil and Human Rights Orgs Speak Out for the First Time on Privacy and Big Data Policy* (Feb. 27, 2014), <http://www.civilrights.org/press/2014/civil-human-rights-orgs-speak-out-on-big-data-privacy.html>.

² The White House, *Big Data: Seizing Opportunities, Preserving Values*, at 7 (May 2014), https://www.whitehouse.gov/sites/default/files/docs/big_data_privacy_report_may_1_2014.pdf.

room for subtle and not-so-subtle forms of discrimination in pricing, services, and opportunities.”³ Federal Trade Commission Chairwoman Edith Ramirez has expressed similar concerns that consumer data could “be used to exacerbate existing socio-economic disparities, by segmenting consumers with regard to the customer service they receive, the prices they are charged, and the types of products that are marketed to them.”⁴

It is particularly important to consider whether data collection and use could have a disparate impact on historically disadvantaged communities in this context because ISPs have access to very sensitive and detailed data regarding customers’ and their families’ online activities. For example, ISPs have the ability to monitor the online domains that their customers visit, which could reveal sensitive information about a customer’s health, political views, finances, and children.⁵ ISPs could also analyze their customers’ online behavior to draw inferences about changes in family or job status,⁶ or combine this new data with existing subscriber records.⁷

To help address concerns about data and discrimination, the Commission should develop broadband privacy rules consistent with the Civil Rights Principles for the Era of Big Data. Our organizations crafted the Principles to guide policymakers attempting to grapple with these complex and challenging problems. Three of the principles in particular may be helpful as the Commission moves forward with a rulemaking:

- *Ensure Fairness in Automated Decisions.* The Commission should consider not only how and what data may be collected, but also how ISPs and their partners may use that data, potentially in inequitable ways.
- *Enhance Individual Control of Personal Information.* The Commission should consider when ISPs should obtain their customers’ affirmative, informed consent before collecting and using their data.
- *Protect People from Inaccurate Data.* The Commission should consider whether ISPs should allow customers to examine the data ISPs collect and use, and to correct or remove any collected information.

³ *Id.* at 46.

⁴ Chairwoman Edith Ramirez, *Protecting Consumer Privacy in the Big Data Age*, at 9–10 (May 8, 2014), https://www.ftc.gov/system/files/documents/public_statements/308421/140508mediainstitute.pdf.

⁵ New America’s Open Technology Institute, *The FCC’s Role in Protecting Online Privacy*, at 4–5 (Jan. 2016), https://static.newamerica.org/attachments/12325-the-fccs-role-in-protecting-online-privacy/CPNI__web.d4fbdb12e83f4adc89f37ebffa3e6075.pdf.

⁶ *Id.* at 5.

⁷ *See* TerraCom and YourTel NAL.

Privacy protections should be made equally available to all consumers, regardless of whether they are rich or poor, using fixed or mobile connections. In light of how data collection and use practices could reinforce societal disparities, the Commission should set strong baseline privacy rules that ISPs must respect for *all* of their customers. If privacy were allowed to become a luxury available only to those who can afford it, this would only exacerbate the concerns about disparate impact detailed above. In addition, the Commission should ensure that privacy parity exists between fixed and mobile broadband services because Black and Hispanic broadband consumers tend to rely more heavily on mobile devices for Internet access.⁸ Blacks and Hispanics are also more likely than White consumers to use mobile broadband connections to look up information about health conditions, jobs, or educational content.⁹

We thank you for your continuing commitment to closing the digital divide, and to ensuring that essential communications services and the advantages they bring are made available to all Americans. We also thank you for working to extend consumer protections—including privacy—to all consumers, including those in historically underserved communities. We look forward to working with you and the FCC to craft broadband privacy rules that protect and benefit all Americans.

Sincerely,

ACLU
18 Million Rising
Black Alliance for Just Immigration
Center for Democracy & Technology
Center for Media Justice
Common Cause
Common Sense Kids Action
Demand Progress
Ella Baker Center
Free Press
Generation Justice
The Leadership Conference on Civil
and Human Rights

May 1st People's Link
Media Alliance
Media Mobilizing Project
NAACP
National Council of La Raza
New America's Open Technology Institute
Public Knowledge
Saint Paul Neighborhood Network
United Church of Christ, OC Inc.
Urbana-Champaign Independent Media
Center
Voices for Racial Justice
Working Narratives

⁸ Monica Anderson, *Racial and ethnic differences in how people use mobile technology*, Pew Research Center (Apr. 30, 2015), <http://www.pewresearch.org/fact-tank/2015/04/30/racial-and-ethnic-differences-in-how-people-use-mobile-technology>.

⁹ *Id.*