In the Matter of)
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National Telecommunications and)
Information Administration) Docket No. 120214135-2135-01
) RIN 0660–XA27
Multistakeholder Process to Develop)
Consumer Data Privacy Codes of Conduct)
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INTRODUCTION AND EXECUTIVE SUMMARY

Verizon appreciates the opportunity to provide input that will help shape the substance and procedure of NTIA's multi-stakeholder process to develop enforceable codes of conduct that implement the Administration's Consumer Privacy Bill of Rights.[1] Verizon remains committed to helping establish responsible, industry-wide standards applicable to all types of providers that will provide consumers with appropriate privacy safeguards and also encourage market innovation and growth.

Regarding consumer data privacy issues that should be addressed in the multi-stakeholder process, NTIA aptly suggested that issues already bolstered by industry self-regulatory efforts are good starting points. Verizon agrees. NTIA should consider an initial multi-stakeholder process focused either on implementing the Transparency

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[1] On February 23, 2012, the Executive Office of the President released "Consumer Data Privacy in a Networked world: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy," ("*Consumer Data Privacy Framework*") of which the Consumer Privacy Bill of Rights is a component. *See* http://www.whitehouse.gov/sites/default/files/privacy-final.pdf. The Department of Commerce's National Telecommunications and Information Administration (NTIA), which is responsible for convening the multi-stakeholder process, requested public comments on which substantive privacy issues warrant enforceable codes and what procedures should foster development of the codes. See *Multistakeholder Process To Develop Consumer Data Privacy Codes of Conduct*, Request for public comments, 77 FR 13098 (2012) ("Request for Comments").

principle[2] in privacy notices for mobile applications ("mobile apps") or on mobile apps
that provide location-based services (LBS). Both would be good initial topics because
mobile apps are widely used among consumers and many industry members have
developed principles that should guide both mobile apps generally and mobile apps that
provide LBS specifically. These principles are sufficiently adaptable to accommodate
myriad developers, manufacturers, platform providers and other players that occupy the
mobile app space. NTIA also should consider convening a multi-stakeholder process to
address international mutual recognition of privacy approaches to facilitate cloud
computing. Global interoperability of privacy regimes is a cornerstone of the
Administration's new privacy framework[3] and a cloud computing code of conduct that
prioritizes shared privacy outcomes, rather than the different processes jurisdictions
employ, would help facilitate cross-border data flows.

Regarding effective multi-stakeholder processes, successful outcomes depend on
tools that enable NTIA to publicly identify, document and move forward with positions
that a significant number of diverse stakeholders support in an open forum. Analysis
developed at the Silicon Flatirons Roundtable Series on Entrepreneurship, Innovation and
Public Policy[4] provides useful guidance on how best to organize a process that produces
meaningful consensus, balanced and diverse stakeholder representation, open
participation, and constructive problem-solving.

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[2] *See Consumer Data Privacy Framework* at 14.

[3] *See id*. at 33-35.

[4] Developments from that roundtable are the subject of a paper by Joe Waz and Phil Weiser, "Internet
Governance: The Role of Multistakeholder Organizations," http://www.silicon-
flatirons.org/documents/publications/report/InternetGovernanceRoleofMSHOrgs.pdf (Jan. 2012) ("Silicon
Flatirons Paper").

DISCUSSION

I.   **The initial multi-stakeholder process could focus on implementing the Transparency principle in privacy notices for mobile apps, on mobile apps that provide LBS, or on international mutual recognition of privacy approaches to facilitate cloud computing.**

As NTIA notes, it makes sense to launch the multi-stakeholder process in a "definable area where consumers and businesses will receive the greatest benefit in a reasonable timeframe" and areas where "stakeholders have begun to collaborate to develop practices, or to develop consensus around specific practices, could provide a starting point."[5] NTIA also should consider selecting topics that have industry-wide impact to help ensure a broad and diverse set of stakeholders participates and agrees on the codes that are developed. For the reasons discussed below, possibilities include implementing the Transparency principle in privacy notices for mobile apps, mobile apps that provide LBS, or international data transfers in the cloud.

> **A.**   **Implementing the Transparency principle in privacy notices for mobile apps.**

Today, wireless platforms are open – and consumers are driving the development of more and more mobile apps by numerous developers. There are many challenges associated with providing privacy notices in the current environment where consumers often download a mobile app on a small screen. In addition, consumers can download an app from a store or the web that does not belong to the wireless carrier, device manufacturer, or device operating system. The mobile provider, device manufacturer or device operating system may not know the consumer has downloaded the app and may have little or no control over the app provider's practices. Due to the rapid growth and

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[5] *See* Request for Comments at 13099.

nascent nature of the apps market, privacy practices may not be as well developed as in other parts of the industry. These factors raise important implications for consumer privacy and for online commerce generally and, combined with the increasing focus of state and federal agencies on the privacy protections that mobile apps afford, they suggest that a useful starting point for the multi-stakeholder process could be to develop a common set of practices that implement the Transparency principle in privacy notices for mobile apps.

NTIA and stakeholders would not have to start from scratch to develop a common set of principles. The GSMA *Mobile Privacy Principles*, which draw upon Fair Information Practice Principles[6] and are global in scope, provide a high-level framework that identifies privacy standards, or outcomes, that mobile users can expect from the wide range of applications and services that they use.[7] GSMA's *Privacy Design Guidelines for Mobile Application Development* further expand on the *Mobile Privacy Principles* by providing implementation guidance and use case examples that illustrate how privacy protections could be incorporated into mobile application design.[8] Both sets of principles apply broadly to industry stakeholders whose practices impact mobile users' privacy – including developers, mobile operators, software providers, device manufacturers, and operating systems.[9]

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[6] *See* http://www.ftc.gov/reports/privacy3/fairinfo.shtm.

[7] *See* http://www.gsma.com/documents/mobile-privacy-principles/20005 (Jan. 2011) ("*Mobile Privacy Principles*").

[8] *See* http://www.gsma.com/documents/privacy-design-guidelines-for-mobile-application-development/20008 (March 2012) ("*Privacy Design Guidelines*").

[9] *See Mobile Privacy Principles* at 4 (noting that users themselves also are covered by the principles, particularly in the social media context); *Privacy Design Guidelines* at 1 (noting that advertisers and analytics companies also are covered by the guidelines).

B. Mobile apps that provide LBS.

The market for mobile apps that provide LBS also has grown exponentially. Today, a variety of entities collect location data through different means to facilitate these services. The variety of players that collect and use location data to power the LBS marketplace underscores the need for a uniform code of conduct that governs all LBS offerings.

Here, too, many industry members already have developed instructive guidelines that protect consumers and allow innovation to flourish. CTIA – the Wireless Association's *Best Practices and Guidelines for Location Based Services* afford industry the flexibility that enables LBS providers efficiently and effectively to apply baseline privacy principles to a variety of contexts, while also accommodating technological developments and evolving business practices.[10] The CTIA Guidelines are technology-neutral; they apply equally to downloaded apps, web-based services, and other technologies that provide LBS. Accordingly, the guidelines are sufficiently adaptable to accommodate the practices of myriad developers, manufacturers, third-party location database providers and platform providers that are involved in different aspects of the LBS marketplace.

C. Cloud Computing

NTIA also should consider convening a multi-stakeholder process to address international data transfers in the cloud. As the Administration recognizes, cloud architecture helps deliver cost-effective and innovate new services to consumers,

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[10] *See* http://files.ctia.org/pdf/CTIA_LBS_Best_Practices_Adopted_03_10.pdf ("CTIA Guidelines").

companies and governments across the globe.[11] As such, the success of the global digital

economy depends in part on increasing the interoperability of privacy regimes – a

cornerstone of the Administration's new privacy framework. A multi-stakeholder

process focused on international mutual recognition of privacy approaches that facilitate

cloud computing would enable stakeholders to develop agreed-upon standards for

international data transfers. The stakeholder process is well-suited to develop these

standards because stakeholders can focus on shared values surrounding privacy and data

protection and develop outcomes that implement those values.

II.   NTIA should ensure that the stakeholder process produces meaningful consensus, balanced and diverse stakeholder representation, open participation, and constructive problem-solving.

Successful outcomes depend on tools that enable NTIA to publicly identify,

document and move forward with positions that a reasonable number of stakeholders

support. Last August, the Silicon Flatirons Center for Law, Technology, and

Entrepreneurship convened thought leaders from industry, government, multi-stakeholder

organizations, and elsewhere in the Internet ecosystem to develop a research agenda on

the effectiveness of multi-stakeholder organizations in providing alternatives to

governmental oversight. In developing the research agenda, roundtable participants

identified core characteristics of multi-stakeholder groups that can serve as a useful

blueprint for NTIA's process development here.

Generally, effective multi-stakeholder groups:

- *Produce outputs that are consensus-based, using voting as a fall-back mechanism to achieve consensus.*[12] While consensus does not mean that

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[11] *See Consumer Data Privacy Framework* at 33.

[12] Silicon Flatirons Paper at 7.

all stakeholders agree, broad stakeholder approval of codes is critical to their adoption and success.[13] NTIA should provide agendas and reference materials in advance of meetings; use commonly accepted rules of order and procedure to govern meetings; and use minutes or other recording mechanisms to document stakeholder input, note emerging action items, and hold stakeholders accountable for responding to those action items. Comprehensive record-keeping will serve as a roadmap for concept development and guide decision-making efforts.[14]

- *Contain balanced representation from diverse economic and social perspectives, including segments other than government and industry.*[15] NTIA can facilitate balanced representation in part by utilizing virtual conferencing, teleconferencing, and other technologies that enable participation among stakeholders with limited ability to travel. NTIA also can actively monitor industry segment participation and solicit broader engagement where segments are under-represented.

- *Eschew formal membership and instead place a premium on open participation, using technological tools that facilitate broad participation.*[16] Verizon agrees with NTIA that the multi-stakeholder process should be open to all interested participants.[17] The same technological tools noted above, which can facilitate balanced representation, also can facilitate open participation.

- *Rely on a set of guiding values or principles to set the tone for dialogue and encourage problem-solving.*[18] NTIA should consult recognized

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[13] *See*, *e.g.*, Internet Engineering Task Force (IETF) Working Group Guidelines and Procedures, http://www.ietf.org/rfc/rfc2418.txt, § 3.3 (Sept. 1998) ("IETF Working Group Guidelines") ("IETF consensus does not require that all participants agree although this is, of course, preferred. In general, the dominant view of the working group shall prevail."). *See also* the process document developed by the World Wide Web Consortium, http://www.w3.org/Consortium/Process/Process-19991111/process.pdf, § 3.3.2 (Nov. 1999) ("Where unanimity is not possible, a group should strive to make consensus decisions where there is significant support and few abstentions. The Process Document does not require a particular percentage of eligible participants to agree to a motion in order for a decision to be made.")

[14] Consensus can also be achieved when a smaller section of industry is able to convene off the record and agree upon core principles that can be presented to a larger body of stakeholders for consideration – a process that the Digital Advertising Alliance followed when it developed the Self-Regulatory Program for Online Behavioral Advertising, *see* http://www.aboutads.info/.

[15] *See* Silicon Flatirons Paper at 5-6.

[16] *Id*. at 6. IETF, which sets technical standards for the Internet, also encourages open participation in public meetings. *See* IETF Working Group Guidelines § 3.1.

[17] Request for Comments at 13100.

[18] *See* Silicon Flatirons Paper at 9.

organizational leadership resources and identify core principles that drive diplomacy and collaborative thinking, and employ those principles in the multi-stakeholder process.[19]

These types of tools will enable NTIA to develop a constructive multi-stakeholder process that fosters development of voluntary enforceable codes.

CONCLUSION

Verizon looks forward to working with government, industry and consumers to develop codes of conduct that enhance and strengthen existing consumer privacy protections in the United States.

Respectfully submitted,

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[19] Other characteristics of multi-stakeholder groups that the roundtable participants noted are that the groups tend to focus on issues having global reach and impact and they also work with government agencies where appropriate. *See id*. at 7-8. These make the topic of international data transfers in the cloud well-suited to a multi-stakeholder process, as noted above.