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April 2, 2012

***By Electronic Delivery***

National Telecommunications and Information Administration  
U.S. Department of Commerce  
1401 Constitution Avenue NW, Room 4725  
Washington, D.C. 20230

Re: Multistakeholder Process to Develop Consumer Data Privacy Codes of Conduct

Ladies and Gentlemen:

This comment letter is submitted on behalf of Visa Inc. (“Visa”) in response to the National Telecommunications and Information Administration’s (“NTIA”) request for comments on procedures to foster the development of legally enforceable consumer data privacy codes of conduct.

The Executive Office of the President’s *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy* (the “Privacy and Innovation Blueprint”) calls for a code of conduct development process that is open to any interested participant. Visa appreciates NTIA’s invitation to interested stakeholders to comment on this multistakeholder process. We welcome the opportunity and look forward to an appropriately open process that develops workable codes of conduct widely adopted by businesses.

**The multistakeholder process should balance the goal of openness with the goal of obtaining a workable solution. Codes of conduct must be workable if they are going to be adopted, and they will be most workable when industry takes the lead in drafting them.**

The goal of the multistakeholder process is to develop legally enforceable codes of conduct that specify how the Consumer Privacy Bill of Rights set forth in the Privacy and Innovation Blueprint applies in specific business contexts. Visa shares the Administration’s desire for a process that is open and consensus-building. We believe that it is equally important to design the process in a way that maximizes the likelihood that it will result in a workable solution within a reasonable timeframe. Balancing these interests, we suggest that the process begin with a meeting or meetings limited to the NTIA and industry members, to identify and discuss issues specific to the particular industry or practice. Once such issues have been identified by the

smaller group, participating industry members could then use them, together with the general framework set forth in the Privacy and Innovation Blueprint, to create a draft code of conduct.

We believe that limiting stakeholder participation to industry members and the NTIA at these first two steps of the process would ensure that industry members are fully engaged. By their nature, the proposed stakeholder discussions should reveal how businesses are addressing important consumer privacy issues, as well as current or proposed best practices that could be incorporated into codes of conduct. If businesses perceive a risk that the statements they make in the stakeholder discussions could be used against them – by participating regulators, consumer advocates, other potential plaintiffs, and/or the press – they may be less than candid, for fear of provoking regulatory, legal, and/or media scrutiny (in fact, they may decline to participate in the process altogether). As a result, the issues may not benefit from a thorough discussion of industry members’ experiences, concerns, and proposed solutions, and the process, as well as any code of conduct that emerges from it, could suffer.<sup>1</sup>

To be clear, non-industry stakeholders must be included in the creation of a code of conduct. Their input is essential, and industry recognizes that the valid concerns of the various stakeholders must be addressed if codes of conduct are to be effective and viewed as legitimate. To that end, we propose that the industry’s draft code of conduct be presented to the larger group of stakeholders, for their input. The NTIA and industry members would then review the comments received from interested stakeholders, participate in meetings with them, and revise the code of conduct as appropriate. To help ensure wide adoption by businesses, a code should require approval by a broad consensus of industry members – and not just a few companies – as a condition of its being finalized.

The goal of broad adoption would be furthered by giving industry, or a consensus of companies within it, the lead in drafting the codes of conduct. Of the interested stakeholders, only members of industry are in a position to know whether a proposed code of conduct would be workable in practice. If a code of conduct is workable and companies are therefore confident in their ability to comply with it, then it is likely to be widely adopted. If, on the other hand, industry is not given primary drafting responsibility, the multistakeholder process seriously risks developing codes of conduct that will not be adopted by significant numbers of businesses, thereby depriving consumers of the privacy protections intended by the Administration.

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<sup>1</sup> In an effort to further encourage candor among participants, we recommend that the NTIA establish and enforce an “off the record” policy for all stakeholder meetings.

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Visa appreciates the opportunity to comment on this important matter. If you have any questions concerning these comments or if we can otherwise be of assistance, please do not hesitate to contact me at (650) 432-1167.

Sincerely,

Russell W. Schrader  
Associate General Counsel and Chief Privacy Officer  
Visa Inc.