

LGBT Technology Partnership

November 9, 2018

National Telecommunications and Information Administration (NTIA)
U.S. Department of Commerce
1401 Constitution Avenue NW, Room 4725
Washington, DC 20230

VIA privacyrfc2018@ntia.doc.gov

Attn: David J. Redl, Assistant Secretary for Communications and Information

**Re: Developing the Administration's Approach to Consumer Privacy
(Docket No. 180821780-8780-01)**

Dear Mr. Redl,

I. Introduction

The LGBT Technology Partnership (“LGBT Tech”) brings together cutting edge tech companies, nonprofit organizations, policy makers, scholars and innovators to improve access, increase inclusion, ensure safety and empower entrepreneurship for LGBT communities around technology. LGBT Tech encourages the continued early adoption and use of cutting-edge, new and emerging technologies by providing information, education and strategic outreach for LGBT communities. We are a national, nonpartisan group of LGBT organizations, academics and high technology companies whose mission is to engage with critical technology and public policy leaders for strategic discussions at all levels. LGBT Tech empowers LGBT communities and individuals, and ensures that media, telecommunications and high technology issues of specific concern to LGBT communities are addressed in public policy conversations.

LGBT Tech welcomes the opportunity to respond to the National Telecommunications and Information Administration’s (NTIA’s) request for comments on ways to advance consumer privacy while protecting prosperity and innovation. The LGBT community has specific privacy concerns that are not immediately obvious and differ from the concerns of other minority communities. Technology, through smart phones, high-speed networks and other current and emerging technologies allow LGBT people to come together, to meet and to empower each other, regardless of geographic distance. No longer does an LGBT individual, regardless of culture or background, need to grow up in a world where they feel alone. This easy access to technology presents new and unique challenges as well. For many LGBT people still choosing with whom they share their sexual orientation, privacy is a paramount concern. It is crucial that

networks have adequate privacy controls to ensure that user data is never compromised or unintentionally revealed so that LGBT people always retain control over what information they choose to share. Open, and just as importantly universal, broadband access across all communications platforms is also a key concern for LGBT people. Furthermore, the Internet has been a lifeline for LGBT people in smaller towns and remote communities and increased access to technology has fostered greater acceptance and community for these often isolated LGBT communities. Universal open access is key to ensuring that any LGBT person, no matter where located, that desires to do so can have ready access to information without worries about their privacy being compromised or their content being restricted.

II. Data Privacy and FTC Enforcement

Data privacy grants everyone the right to determine what data other people can access, who is allowed to view such data, and when those people can access it. A privacy data breach that exposes someone's sexual orientation or undisclosed gender identity can have far-reaching effects, including the loss of employment, loss of familial relationships and friendships, and even the potential for physical harm or death. Networks must ensure data privacy controls so user data is never compromised or unintentionally revealed in order to allow LGBT individuals to retain control over what information they choose to share.

The research we've done at LGBT Tech shows just how crucial data privacy is to the LGBT community. Here's a quick look at some vital statistics:

81% of LGBT youth have searched for health information online, as compared to just 46% of non-LGBT youth;

80% of LGBT respondents participate in a social networking site, such as Facebook or Twitter, compared to just 58% of the general public

Additionally, the research available indicates that searching for health information online may be particularly meaningful for lesbians whose health needs are often ignored or overlooked. But it's not only life-saving health information or other resources that have changed the lives of LGBT people: the Internet has also offered community. Broadband technologies allow access to supportive community members, friends, or loved ones - even across great distances. This ability to create or to maintain connections that are safe and welcoming can be life-saving for LGBT individuals feeling isolated in their physical locations.

For these reasons, data privacy is a special concern for the LGBT community. Our heightened use of the Internet, coupled with the potentially catastrophic consequences of a data privacy breach, makes our community especially vulnerable in this arena. While data privacy should be a concern for anyone who uses technology, it is of life-saving significance to LGBT-identifying people. Without adequate data privacy, the ramifications for the LGBT community can be catastrophic. Users of the Internet and broadband technologies can make changes to try to protect their own data privacy, but networks and providers are also

responsible for users' safety - especially those in the LGBT community. Beyond issues of privacy and embarrassment, there is a very real risk of harassment, potential physical harm, loss of employment, and even loss of family and friends. Data privacy is crucial for the LGBT community, allowing individuals to opt to disclose personal information only to those they choose. Data privacy grants protection and safety in all facets of life.

The Request for Comment states in part, "Given its history of effectiveness, the FTC is the appropriate federal agency to enforce consumer privacy with certain exceptions made for sectoral laws outside the FTC's jurisdiction, such as HIPAA. It is important to take steps to ensure that the FTC has the necessary resources, clear statutory authority, and direction to enforce consumer privacy laws in a manner that balances the need for strong consumer protections, legal clarity for organizations, and the flexibility to innovate." LGBT Tech agrees that the FTC is the appropriate agency to formulate and enforce data privacy rules that protect consumer privacy and must given the appropriate resources and tools to meaningfully enforce such rules. These tools could include a clear and exclusive grant of statutory authority to establish and enforce privacy rules across the entire Internet ecosystem and, just as important, the agency should be provided with the resources and authority to strongly enforce these rules. These goals could be accomplished through an increased budget and staff to police and enforce these rules, and increased rulemaking and enforcement tools as well.

III. Uniform Rules Across Internet Ecosystem

With regards to uniform rules, the Request for Comment states in relevant part, "Any action addressing consumer privacy should apply to all private sector organizations that collect, store, use, or share personal data in activities that are not covered by sectoral laws. The differences between business models and technologies used should be addressed through the application of a risk and outcome-based approach, which would allow for similar data practices in similar context to be treated the same rather than through a fragmented regulatory approach." LGBT agrees that there must be both clarity and predictability in the privacy rules governing the use and sharing of consumer data. Any rules that Congress promulgates should preserve a free and open Internet, as well as empower the Federal Trade Commission (FTC) to continue to regulate ISPs in the same manner as other online data collectors. This can be achieved by Congress making clear that the FTC has sole jurisdiction to apply consistent, technology-neutral regulations to the privacy practices of all online entities, including ISPs.

LGBT Tech has consistently believed, and continues to believe that the only way to ensure long-term legal consistency and prevent rule changes based on which way the political pendulum is currently swinging is for Congress to reach across the aisle and pass common sense legislation that works for today's dynamic digital networks. LGBT Tech supports Internet regulations that ensure full and equal access for LGBT consumers, and our organization remains concerned that applying different standards to different participants in the Internet ecosystem will harm consumers. Congress should focus on creating policies that are responsive to the current Internet environment and that have been crafted specifically to address the modern problems we face. It is clear that a bipartisan law in Congress is the most essential piece to

codifying broadband privacy principles and ensuring a stable environment where investment and innovation can thrive. Strong and fair rules that protect all consumers equally no matter what Internet site they happen to be surfing are essential for all consumers.

Specifically, those policies start with stronger privacy protections that allow users to share information with those they choose and not with those they don't. That means clearer and stronger standards for encrypting and securing information against breaches and hacks, and more robust rules and penalties to ensure big datasets aren't passed around at will by the companies controlling our data companies without consumer knowledge and approval. We also needed a broader and richer understanding of online privacy – one that covers social media and search platforms as well as internet providers so that no one can send LGBT users to the back of the digital bus or block access to websites or services featuring gay themes. Finally, new policies must also address algorithmic discrimination and targeting practices in order to ensure malicious advertisers cannot shut out or overcharge gay customers while preserving the ability of good faith actors like the Trevor Project to efficiently reach relevant audiences and communities. These rules must go further to ensure that digital advertising tools can never again be weaponized.

Clear bipartisan rules would have the benefit of providing certainty and stability for the further development of the open Internet. Furthermore, the rules would no longer be subject to the varying political priorities inherent in the frequent changing of political appointees. Today more than ever, it's crucial that the government enacts policies that strike the proper balance between encouraging the investment and competition that leads to expanded access to next-generation services and technologies and the privacy and access policies that ensure that communities like ours continue to enjoy the fruits of the broadband revolution. A comprehensive broadband bipartisan Congressional solution is essential to codifying and providing a stable environment where investment and innovation can thrive while safeguarding the open Internet policies needed to protect consumers. The fact remains that Congressional legislation has always been the best solution to provide a roadmap to ensure an open and free Internet.

IV. Conclusion

LGBT Tech applauds the NTIA for raising the important questions and issues contained in the Request for Comment. As our comments point out, the protection of data privacy is of paramount importance to the LGBT community, particularly where data breaches or other unauthorized uses can lead to catastrophic consequences for members of our community. LGBT Tech urges the NTIA to pay close attention to the concerns and needs of civil and social rights groups that may be uniquely affected by these rules. We look forward to working closely with the NTIA and other stakeholders to advance recommendations that are responsive to the needs of our community.

Sincerely,

Carlos Gutierrez

Carlos Gutierrez
Head of Legal and Policy Affairs
LGBT Technology Partnership