**Before the**
**DEPARTMENT OF COMMERCE**
**National Telecommunications and Information Administration**

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| In the Matter of | ) | |
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| Multistakeholder Process to | ) | Docket No. 120214135-2135-01 |
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| Develop Consumer Data Privacy | ) | |
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| Codes of Conduct | ) | |
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## COMMENTS OF TECHAMERICA

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TechAmerica hereby submits these comments to the National Telecommunications and Information Administration ("NTIA") in regard to its request for comment on "substantive consumer data privacy issues that warrant the development of legally enforceable codes of conduct" and "procedures to foster the development of these codes."[1]  TechAmerica's members have a vested interest in consumer privacy and technological innovation and TechAmerica is pleased to be able to file comments on their behalf in this proceeding.

TechAmerica is the leading voice for the U.S. technology industry, which is the driving force behind productivity growth and jobs creation in the United States and the foundation for the global innovation economy.  Representing approximately 1,000 member companies of all sizes from the public and commercial sectors of the economy, TechAmerica is the industry's largest advocacy organization and is dedicated to helping members' top and bottom lines.

TechAmerica's members include:  manufacturers and suppliers of broadband networks and equipment; consumer electronics companies; ICT hardware companies; software and application providers; systems integrators; Internet and e-commerce companies; Internet service providers; information technology government contractors; and information technology consulting and sourcing companies.

TechAmerica appreciates NTIA's work on consumer privacy issues and the time and effort it put into the development of the Privacy and Innovation Blueprint ("Blueprint"), as released on February 23.  Certainly, the core concepts of consumer

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[1] *Multistakeholder Process to Develop Consumer Data Privacy Codes of Conduct*, 77 Fed. Reg. 13098 (March 5, 2012) (NTIA RFC).

privacy and innovation are of great importance to the technology industry and TechAmerica's members.

In this regard, TechAmerica is committed to ensuring the multistakeholder process is as successful as it can be.[2]  To be sure, the task of assembling all interested stakeholders and forging consensus on important privacy issues will not be an easy one.  TechAmerica hopes the input provided below will assist NTIA in its effort.

**Consumer Data Privacy Issues To Address**

As a threshold matter, TechAmerica agrees with NTIA that the multistakeholder process should be "focused on a definable area where consumers and businesses will receive the greatest benefit in a reasonable timeframe."[3]  TechAmerica further agrees that those areas of consumer data privacy that have already received some attention from stakeholders are the best places to start this process.

In this vein, TechAmerica supports NTIA's suggestion of convening an initial multistakeholder process to facilitate the implementation of the "Transparency" principle in privacy notices for mobile applications.  As NTIA notes, a great deal of work has already been done on this subject up to this point, including by CTIA – The Wireless Association and the Mobile Marketing Association.

That said, it is important for NTIA to be aware of the law of unintended consequences when facilitating the multistakeholder process and determining topics of consideration.  To be sure, even an issue as seemingly straightforward as transparency for mobile applications could be problematic if the scope of personal data to be covered is too broad.  Frankly, there remain differences of opinion on what constitutes "personal

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[2] However, participation in the multistakeholder process should not necessarily be construed as a full endorsement of the Privacy and Innovation Blueprint by those participating entities.

[3] NTIA RFC at 13099.

data," notwithstanding NTIA's definition as stated in its Blueprint.[4]  For example, treating a unique device identifier as "personal data" in and of itself could be problematic. TechAmerica, therefore, believes that each multistakeholder group must first reach consensus on what type(s) of personal data are to be covered by the particular privacy principle as applied to the particular topic.

NTIA also seeks comment on other potential topics of consideration, including "cloud computing services" and "trusted identity systems."[5]

With regard to cloud computing services, TechAmerica believes the topic is too broad for a single stakeholder group to discuss in a "reasonable timeframe."  A more refined focus is needed.  Certainly, the facilitation of the free flow of information across borders is of paramount importance to the cloud computing industry and TechAmerica. To the extent a multistakeholder group can be formed, perhaps including foreign government representatives, to discuss and coalesce around a specific code(s) of conduct that enables such information flows (with particular focus on consumer cloud services), TechAmerica welcomes such discussion, but further analysis is necessary.

TechAmerica also cautions NTIA against considering "trusted identity systems" as a topic for consideration.  While it is true there are inherent privacy issues worthy of discussion in this area, the problem lies in how a code of conduct for one identity system would affect the deployment of other identity systems.  Trusted identity systems should be viewed holistically and therefore TechAmerica believes the task of developing codes of conduct for all systems would be too time-consuming and difficult to consider within NTIA's multistakeholder process.

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[4] NTIA defines "personal data" as "any data…which is linkable to a specific individual" and includes "an identifier on a smartphone…"  NTIA Privacy and Innovation Blueprint at 10.
[5] NTIA RFC at 13099-100.

## Implementing the Multistakeholder Process

TechAmerica is heartened by NTIA's acknowledgement that its role in the multistakeholder process will be to "provide a forum for discussion and consensus-building among stakeholders."[6] TechAmerica envisions NTIA as a facilitator rather than a decision-maker in the process.

At the outset, TechAmerica agrees with NTIA that the multistakeholder process must be "open" and include a "broad array of perspectives and expertise."[7] The concept of "openness" is one that permeates a variety of stakeholder groups working currently even though their processes may differ. For example, the American National Standards Institute (ANSI) characterizes its process as "open" by including concepts of transparency, inclusivity, impartiality, and consensus. NTIA would be wise to adhere to those principles as it formulates its multistakeholder process.

### *Transparency*

TechAmerica believes that in order for a multistakeholder group to function properly all essential information regarding activities must be accessible to all interested parties. TechAmerica suggests that a Working Group (WG) handle each identified topic. Each WG will determine its scope, timeline, and procedures. But certain baseline rules should apply in order to ensure information is shared in a timely and open manner. For example, meetings (or calls) should be announced at least 10 business days in advance, which should provide interested parties enough time to plan accordingly. WG agendas and other documentation should be posted online, preferably at a designated

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[6] Id. at 13098.
[7] Id. at 13100.

place on NTIA's website, at least five business days before consideration of the documents.

Further, TechAmerica suggests that, if a WG so decides, NTIA should provide a "secretary" who can take meeting minutes for a WG and post those minutes online within two business days after a WG meets. These minutes will provide the general public insight into the process and provide the WG an official record of proceedings to facilitate further discussion. However, TechAmerica believes that the Chatham House Rule[8] should apply to WG meetings and discussions, to the fullest extent possible. Thus, any meeting "minutes" or external representation of WG discussions would not attribute specific claims to specific individuals or organizations. Application of this "rule" will allow for a fuller discussion and will encourage openness and information sharing.[9] Notwithstanding the above, any formal proposal put up for consideration by a WG should be attributed to the entity or person proposing it.

Lastly, TechAmerica believes that any agreed-upon code of conduct be offered for public review and comment for a reasonable period of time. Each WG can then consider comments as it sees fit.

*Inclusivity*

In order to ensure all interested stakeholders have an opportunity to participate on a WG, a Notice of Working Group should be issued inviting all stakeholders to join a WG prior to a WG initiating activity. Such notice can be posted online. Stakeholders should be given the opportunity to volunteer for the WG within a reasonable period of

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[8] The Rule is defined as: "When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed."
[9] TechAmerica believes it would be especially counterproductive for the media to be present during WG meetings, as some parties have suggested.

time.  TechAmerica suggests that each WG set up an email distribution list and/or a collaborative discussion tool to ensure interested parties are included and to facilitate further engagement outside of formal WG meetings.

*Consensus*

As NTIA notes, the multistakeholder discussions will be "consensus-driven."[10]  Of course, what constitutes consensus matters greatly.  TechAmerica believes, as a starting point, that consensus must include representatives from materially affected and interested parties.  Indeed, consensus should include a very large majority of those who are materially affected by the proposed code of conduct.  This is vitally important considering that it is industry that will be possibly adopting and held liable for whatever code of conduct is agreed upon.  Additionally, consensus will likely require that any strongly held objections be debated until most people within the WG are satisfied that the objections are no longer valid.

*Impartiality*

Each WG will function at its best when no one interest dominates the process or receives favorable treatment over another party.  As a facilitator, NTIA should stand ready to ensure that all parties involved have a say in the discussion if they desire one. Moreover, as a way to enable impartiality, TechAmerica suggests that each WG agree at its outset upon a clear mission statement and purpose and relatively short, self-imposed deadlines.  This exercise will, hopefully, enable focused and timely collaboration and ensure that tangential discussions are kept to a minimum. TechAmerica also believes that it is worthwhile for WG participants to provide a modest

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[10] NTIA RFC at 13098.

"statement of interest" prior to engaging a WG.  Such a statement will provide all interested parties a general idea of the points of view to be represented and will further facilitate discussion and impartiality.

**Conclusion**

TechAmerica applauds NTIA for initiating the multistakeholder process.  Of course, any successful endeavor such as this one will require a great deal of time and effort for all parties involved.  TechAmerica believes, however, if the topics of consideration are sufficiently tailored, the WGs are organized well and are transparent, and all interested parties are heard, then consensus is possible.  TechAmerica and its members remain committed to consumer privacy issues and welcome the opportunity to participate in the process as it develops to ensure that both consumer privacy and technological innovation work hand-in-hand.