

**Before the  
Department of Commerce  
National Telecommunications and  
Information Administration**

<b>In the Matter of</b>	)	
	)	
<b>Multistakeholder Process To Develop Consumer Data Privacy Codes of Conduct</b>	)	<b>Docket No. 120214135–2135–01</b>
	)	

**COMMENTS OF  
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom)<sup>1</sup> is pleased to provide these comments to the National Telecommunications and Information Administration (NTIA) in the above referenced proceeding, regarding the development of legally enforceable codes of conduct through the use of a multi-stakeholder process.<sup>2</sup> USTelecom shares the view contained in the White House’s recent report on consumer data privacy (Privacy White Paper)<sup>3</sup> that strong data privacy protections are critical to assuring consumer confidence in the technologies and companies that drive the digital economy.

USTelecom’s members companies are providing their customers high levels of privacy protection, and we fully support the development of a consistent privacy framework for all stakeholders in the Internet economy. As NTIA moves forward to develop such a framework,

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<sup>1</sup> USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

<sup>2</sup> Multistakeholder Process To Develop Consumer Data Privacy Codes of Conduct, 77 Fed. Reg. 13098, (March 5, 2012) (*Notice*).

<sup>3</sup> White House Report, *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy*, February 2012 (*Privacy White Paper*).

USTelecom encourages the agency to embrace an approach that moves away from regulatory stovepipes and technological distinctions and toward policies based on consumer welfare and economic efficiency.

USTelecom shares NTIA's view that the best and most efficient way to develop such a framework is through the proposed multi-stakeholder process.<sup>4</sup> An open process that includes a broad range of relevant stakeholders will more rapidly foster the development of a workable privacy framework. Moreover, USTelecom encourages NTIA to benefit from completed and/or in-progress best-practices efforts that are focused on various consumer data privacy topics.

**I. Workable Solutions to Complex Privacy Issues are Best Achieved Through a Multi-Stakeholder Process.**

As discussed throughout the Privacy White Paper, privacy has become an increasingly complex issue, impacting consumers and a broad range of stakeholders throughout the Internet environment. Moreover, the Internet's universal architecture means it is influenced by, and has an impact on, a global set of stakeholders. In such a complex environment, it would be impossible for a single sector or specific group of stakeholders to successfully implement a workable framework appropriate for all relevant parties. A multi-stakeholder process that is open to all appropriate stakeholders, and that facilitates their full participation, represents the best opportunity to achieve a workable privacy framework.

USTelecom shares the view that the "greatest advantage of multi-stakeholder processes is that they can produce solutions in a more timely fashion than regulatory processes and treaty-based organizations."<sup>5</sup> It has become increasingly apparent in recent years that the regulatory process simply cannot keep pace with technological innovations. As noted in the Privacy White

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<sup>4</sup> *Notice*, pp. 13098 – 13099.

<sup>5</sup> *Privacy White Paper*, p. 23.

Paper, a key advantage of the multi-stakeholder process, over a regulatory approach, is that they can focus on specific issues, and “significant progress toward a solution” can be achieved “within months, rather than years.”<sup>6</sup>

Indeed, existing multi-stakeholder processes already fulfill a valuable and important role in the functioning of the Internet. For example, through a global, voluntary and consensus-based process, the Internet Engineering Task Force (IETF) addresses a broad range of issues, including development of the technical underpinnings of the Internet. Standards developed through the IETF’s multi-stakeholder process provide the foundation for Internet services used around the world, such as domain names, e-mail, the Web, and instant messaging.

Another example can be found in the Communications Security, Reliability and Interoperability Council (CSRIC) at the Federal Communications Commission (FCC). Since its initial establishment in 2009, the CSRIC has established various working groups that each focus on a narrow area. Over the last several years, these CSRIC working groups have developed dozens of new and modified best practices to address issues in highly specific areas, such as those relating to the botnet threat and others regarding cyber vulnerabilities.

USTelecom supports NTIA’s role in the multi-stakeholder process as providing a “forum for discussion and consensus-building among stakeholders.”<sup>7</sup> USTelecom strongly supports NTIA’s stated intention to assist parties in reaching consensus, while refraining from “substituting its own judgment” in such deliberations.<sup>8</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> *Notice*, p. 13098.

<sup>8</sup> *Id.*

A major key to the success of any multi-stakeholder process, however, is that *all* significant parties that are germane to the issue of Internet privacy are represented in any discussions. It is therefore imperative that NTIA remain vigilant in ensuring that any multi-stakeholder process includes all types of entities that view, collect, and/or use significant amounts of consumer data. Such vigilance by NTIA is appropriate, given the Privacy White Paper’s acknowledgement that a wide variety of companies – including “search engines, ad networks, and online social networks” – “can build detailed profiles of individual behavior over time,” because all of these companies can “have access to significant portions of individuals’ Internet usage histories.”<sup>9</sup>

In addition, USTelecom encourages NTIA to focus its development of a privacy framework on the consumer impact of privacy issues, rather than on particular technologies, specific network layers, or business models. Specifically, all participants in the broadband marketplace should be subject to a consistent and technologically neutral privacy framework in order to meet consumers’ privacy expectations. This approach is consistent with the Federal Trade Commission’s (FTC’s) recent conclusion in its own report on privacy that “any privacy framework should be technology neutral.”<sup>10</sup>

## **II. NTIA Should Avail Itself of Existing and In-Progress Multi-Stakeholder Privacy Efforts**

While NTIA seeks comment on specific consumer data privacy topics for potential consideration in its multi-stakeholder process, it should note that a great deal of activity has already been taking place throughout the privacy community. USTelecom encourages NTIA to

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<sup>9</sup> *Privacy White Paper*, p. 11.

<sup>10</sup> Federal Trade Commission Report, *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers*, p. 56 (March 2012).

avail itself of existing and in-progress multi-stakeholder privacy efforts. Doing so will lessen the need for NTIA to recreate new frameworks for developing privacy best practices, and instead allow it and multi-stakeholder participants to start with existing processes and build on them.

There are numerous privacy related frameworks that are currently in development. For example, the Center for Democracy & Technology (CDT) and the Future of Privacy Forum (FPF), announced last year that they were collectively working with “major stakeholders in the mobile ecosystem,” to include app developers, device manufactures, and mobile providers, in order to develop best practices and privacy principles for mobile devices.<sup>11</sup> CDT and FPF anticipate that once completed, the principles will provide guidance to developers, providers, and policymakers on crucial aspects of consumer privacy in the mobile application marketplace, including meaningful user choice, privacy by design, and limited data retention. The CDT-FPF effort represents one of several initiatives focused on discrete aspects of privacy.

### **III. Conclusion**

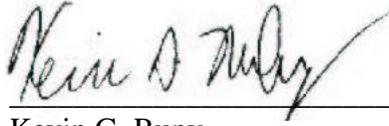
USTelecom strongly supports NTIA’s efforts to establish privacy related codes of conduct through a voluntary multi-stakeholder process. A voluntary, multi-stakeholder process is a more productive mechanism for producing privacy codes of conduct, then a top-down regulatory approach. NTIA should avail itself of existing and in-progress multi-stakeholder privacy efforts, thereby allowing the multi-stakeholder participants in NTIA’s process to benefit from existing, and in-progress privacy frameworks.

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<sup>11</sup> See, Joint CDT, FPF Statement on the Development of App Privacy Guidelines, May 19, 2011 (available at: [https://www.cdt.org/pr\\_statement/joint-cdt-fpf-statement-development-app-privacy-guidelines](https://www.cdt.org/pr_statement/joint-cdt-fpf-statement-development-app-privacy-guidelines)) (visited March 28, 2012).

Respectfully submitted,

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