

**BEFORE THE
DEPARTMENT OF COMMERCE**

In the Matter of)
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Multistakeholder Process To Develop)
Consumer Data Privacy Codes of Conduct)
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COMMENTS OF AT&T INC.

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INTRODUCTION

AT&T Inc. (“AT&T”), on behalf of itself and its affiliates, is fully committed to participating in the multistakeholder process to develop consumer data privacy codes of conduct that the National Telecommunications and Information Administration, U.S. Department of Commerce (“NTIA”), is establishing pursuant to the release by the Executive Office of the President of the “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” or the “Blueprint”). To this end, we are pleased to provide these comments in response to the NTIA’s request for public comments on the “Multistakeholder Process To Develop Consumer Data Privacy Codes of Conduct”.¹

Constantly accelerating growth, and change on the Internet is the backbone of our dramatically innovative information age and digital economy. We believe that companies will continue to find it in their direct economic interest to foster consumer comprehension of and comfort with innovation so that consumers will trust and use productive new technologies as they become available. AT&T believes that more consistent industry practices for protecting personal information—and explaining those protections to customers—through voluntary codes of conduct could be a great benefit both to consumers and to data holders. Voluntary compliance with codes of conduct developed through a flexible multistakeholder process that contemplates fast-changing technology is a far better alternative to regulation that will inevitably become an antiquated response to outdated technology.

We applaud the NTIA’s efforts to facilitate a process that will serve as an opportunity to reassure customers of AT&T, and like-minded companies, of their commitment to consumer privacy. Developing voluntary privacy codes of conduct by building on the consensus and experience developed through existing industry self-regulation will ensure the development of standards that help safeguard consumer data and can be implemented without incommensurate burden on the business community and innovation. AT&T has extensive first-hand experience participating in multistakeholder processes that have yielded both public and private sector privacy and other Internet guidelines and standards. AT&T offers suggestions here for factors to

¹ 77 Fed. Reg. 13098 (Mar. 5, 2012) [*hereinafter* “Request for Comments”].

be considered in selecting topics, which topics could be most fruitfully addressed, and procedures most conducive to enabling productive multistakeholder consideration.

EXECUTIVE SUMMARY

The Blueprint is particularly significant at this critical time in the development of Internet policy. AT&T is pleased that it expressly recognizes and appreciates the tremendous economic and social benefits that derive from the free flow of information, as well as the central importance of a bottom-up, decentralized, consensus-driven approach to creating voluntary privacy codes of conduct.

AT&T's approach to protecting our customers' privacy rests upon four pillars: transparency, consumer control, privacy protection and consumer value. We believe that the Blueprint's framework comports with these values, and we are particularly supportive of the framework to the extent that it contemplates development of codes of conduct that incorporate standards that will evolve over time contemporaneously with new technologies and business models. The working groups convened to address the various privacy topics and develop the codes of conduct must continue to encourage innovation and remain neutral toward particular current technologies. This technology neutrality is particularly vital in the Internet information ecosystem given the evolution towards new model technologies and devices.

In selecting topics to be addressed through the multistakeholder process, we believe that the NTIA should consider a number of factors, including the scope of the topic (whether it is sufficiently well-defined to be effectively addressed in a working group), the existence of recent guidance on the topic, and whether there are indicia of consumer concern or confusion about a topic. We believe that there are a number of issues of great importance to consumer privacy that warrant the attention of a working group convened as part of the multistakeholder process. In particular, guidance regarding mobile app privacy and privacy in the context of consumer cloud computing services would be timely, and could build on existing guidance developed by private sector and government organizations. In convening multistakeholder working groups to address these topics, we recommend that NTIA develop a process that draws on the strengths of analogous groups and precedents, as the best route to working group openness, transparency, and consensus—the necessary prerequisites for creation of meaningful and effective privacy codes of conduct.

AT&T supports consistent enforcement of a voluntary code of conduct by third-party accountability mechanisms, with the backstop of Federal Trade Commission (“FTC”) enforcement, for any company that elects to hold itself out as adhering to a code. As the Blueprint notes, the goal should be to eliminate inconsistent privacy requirements that cause consumer confusion.² However, in our view, the primary enforcement vehicle should be through third-party accountability mechanisms. For example, AT&T works with TRUSTe to verify compliance with our privacy policy and the Digital Advertising Alliance’s (“DAA”) Advertising Choice program. By using the third-party accountability mechanisms as the initial enforcement mechanism, government resources can be focused on the most serious and far-reaching violations while relatively minor infractions can be cured without government involvement.

RESPONSES TO NTIA’S REQUEST FOR COMMENTS

A. Factors To Be Considered In Selecting Issues For The Privacy Multistakeholder Process³

The NTIA has asked for comments on the factors that should be considered in selecting issues for consideration in the multistakeholder process. We submit that the NTIA should consider the following factors:

- The scope of the topic: whether the topic is sufficiently well-defined and sufficiently narrow that it can feasibly be discussed in a working group. Multistakeholder processes can be cumbersome, so we believe that the more focused the topic, the more fruitful the discussion is likely to be.
- The complexity of the consumer relationships with applications and service providers, and the potential for consumer confusion or concern about a topic.
- The degree to which the multistakeholder process can fruitfully build on existing teachings from private sector or government-issued guidance.

² Blueprint at 6, 29-30.

³ Responsive to NTIA’s second Request for Comment.

- The degree to which private sector or government-issued guidance already settles expectations, creates broad industry compliance and ensures consumer privacy, such that a code of conduct is not immediately necessary to achieve these goals.
- The rate at which the relevant technology is changing in a significant manner, such that a code of conduct would either become rapidly obsolete, or would need to be developed at such a high level that it would not provide meaningful guidance.
- Eliminating the potential for overlapping and inconsistent codes. A situation in which a single company is subject to multiple codes that are not overtly consistent with each other could create a bureaucratic rat’s nest.

B. Issues To Be Addressed Through The Privacy Multistakeholder Process⁴

The NTIA has asked for input on the topics that should be addressed in the multistakeholder process. We agree that the process should start with discrete issues, for which development of targeted and meaningful codes of conduct is feasible. We believe that success with these initial issues would serve as a foundation for continued multistakeholder engagement.

It will be important for the NTIA to monitor the segmentation of topics so that the “jurisdictions” of the various working groups are not unduly overlapping. In this regard, it may be helpful for the NTIA to help the groups define the areas to be considered so that the logical limitations of the various inquiries are clear.

1. Mobile Device Applications

AT&T agrees that it would be beneficial both to consumers and to members of industry to convene a stakeholder working group (or multiple groups) to address issues surrounding mobile application devices (“mobile apps”). This is a nascent and dynamic market that is delivering the benefits of innovation and choice for consumers—but where uncertainty exists because of the nature of open platforms for mobile app development. Implementation of a code of conduct that addresses mobile app privacy could focus on two challenges already identified in that area: (1) how to provide consumers with understandable and complete notice of privacy

⁴ Responsive to NTIA’s first Request for Comment.

practices given limitations inherent to mobile devices such as screen size; and (2) how to ensure that the multiple participants involved in mobile app development and delivery can work in concert to ensure proper notice is given. It is worth noting that the mobile Internet community is a very complex one, consisting of carriers, device manufacturers, operating system developers, mobile browsers, and apps developers as well as advertisers and websites. The responsibility to protect consumer privacy must be shared by each of these entities. With regard to mobile apps in particular, we believe that one of the goals of the multistakeholder process should be to provide information and assistance for apps developers so they have the incentive to participate in voluntary industry guidelines.

This working group could draw on the existing resources developed through other multistakeholder processes, such as location-based services guidelines developed by CTIA-The Wireless Association⁵ and the Self-Regulatory Principles for Online Behavioral Advertising developed by the DAA.⁶ In addition, the working group would be well-served to focus on development of model privacy disclosures for mobile devices (which take into account different business models and contexts), where adherence to the model will create a presumption of compliance with the code of conduct. Here, again, the working group could draw on existing guidance, such as the “Privacy Design Guidelines for Mobile Application Development” developed by the Global System for Mobile Communications Association (“GSMA”).⁷ Greater consistency of privacy disclosures across the mobile ecosystem, including handset manufacturers, carriers, apps stores, advertising networks and apps developers, will help consumers manage their privacy as they enjoy the benefits of mobile apps.

2. Cloud Computing Services

It would also be beneficial for a working group to address certain consumer cloud computing issues. Cloud computing is an enormously broad topic, and it would not be feasible to tackle the entirety of this emerging issue in a single working group designed to produce a single code of conduct. We believe that it would be more productive to focus on a cloud issue of particular importance: providing clear notices about privacy and security practices for consumer data in the cloud (or a sub-topic of that broader topic).

⁵ Further information about CTIA is available at <http://www.ctia.org/> (last visited April 2, 2012).

⁶ Further information about DAA is available at <http://www.aboutads.info/> (last visited April 2, 2012).

⁷ Further information about GSMA is available at <http://www.gsma.com> (last visited April 2, 2012).

Enterprise cloud issues have already been explored in detail both by industry and government groups, so the working group would be able to draw on these teachings. For example, the TechAmerica Foundation (“TechAmerica”) recently released “A Comprehensive Guide for Best Practices in Cloud Computing for State and Local Governments,”⁸ and the National Institute of Standards and Technology (“NIST”) has issued Guidelines on Security and Privacy in Public Cloud Computing, which provides an overview of the security and privacy challenges facing public cloud computing and presents recommendations that organizations should consider when outsourcing data, applications and infrastructure to a cloud provider.⁹ While the working group could benefit from the teachings of these groups, we believe that there is no pressing need for further guidance on enterprise issues at this time, as TechAmerica and NIST have established de facto standards for the enterprise customer segment. In addition, many enterprises have extremely specific and unique needs when interacting with the cloud, so generalized guidance through codes of conduct may not be feasible.

In contrast, we are not aware of any comparable guidance for consumer-based cloud services. We believe that development of more consistent industry guidelines for privacy disclosures and practices would help to increase consumer confidence in cloud services. This is particularly applicable to cloud services which involve consumers storing documents, photos and other types personal information online. It also would help to create a more consistent experience for consumers. For these reasons, we believe it would be most beneficial—and most in keeping with the goals of the Blueprint—to establish a working group focused on consumer cloud services.

3. Structuring The Discussions To Ensure Openness, Transparency And Consensus-Building¹⁰

AT&T applauds the NTIA’s efforts to develop collaborative, multistakeholder processes that are open, transparent, and consensus-driven. Singling out these three principles—openness, transparency, and consensus-building—at the outset is particularly important given that multistakeholder processes can be unwieldy or unrepresentative due to the number of entities

⁸ This guidance is available at the SLG Cloud Commission, operated by the TechAmerica Foundation, at <http://www.cloud4slg.org/> (last visited April 2, 2012).

⁹ NIST Special Publication 800-144, available at <http://csrc.nist.gov/publications/nistpubs/800-144/SP800-144.pdf> (last visited April 2, 2012).

¹⁰ Responsive to NTIA’s Requests for Comment 3-16.

who should necessarily be involved. In order to develop consensus, the multistakeholder process must be truly voluntary and decentralized, which differentiates it from the limitations of top-down government regulation.¹¹

We believe that the best way to ensure adherence to these principles is for the NTIA to play a managerial and convening role, by selecting topics (through this comment process) for focusing group attention at the outset, and by establishing a set of procedures for convening the working group and a template for developing codes.¹² In developing these procedures, we believe that it would be instructive for the NTIA to examine the multistakeholder processes implemented by a number of private-sector, international, and U.S. government organizations that address Internet issues, including the Broadband Internet Technical Advisory Group (“BITAG”),¹³ The Internet Engineering Task Force (“IETF”)¹⁴ and WC3 standards development processes,¹⁵ and the National Strategy for Trusted Identities in Cyberspace (“NSTIC”).¹⁶ ¹⁷ While no single set of procedure from any one group should be applied wholesale here, we believe that shared strengths of these organizations’ procedures should apply here: the NTIA should facilitate information-sharing in the role of convenor, without imposing unduly prescriptive requirements on the working groups.

Based on our experience with many types of multistakeholder processes, we also urge the NTIA to preserve flexibility in the process that is used to develop consensus. The focus should be on assessing the legitimacy of the output of the multistakeholder process, not micromanaging every aspect of the meetings, discussions and work efforts that are an inherent part of the process. For example, the NTIA should expect that participants likely will want to engage in a combination of public and private discussions, and utilize formal or informal working groups to address specific issues. If the multistakeholder process itself is overly rigid, then it will produce

¹¹ Blueprint at 23-24.

¹² AT&T agrees with the NTIA that because participants will not provide “advice or recommendations” as a group to the Federal Government, the multistakeholder processes discussed here should not be subject to the Federal Advisory Committee Act (“FACA”), 5 U.S.C. App. 2. *See* Request for Comments at 13099 n. 7. However, AT&T believes that certain elements of the FACA process relating to meeting logistics are instructive. *See* 5 U.S.C. App. 2 § 9.

¹³ Further information about BITAG is available at <http://www.bitag.org/> (last visited April 2, 2012).

¹⁴ Further information about IETF is available at <http://www.ietf.org/> (last visited April 2, 2012).

¹⁵ Further information about the WC3 processes is available at <http://www.w3.org/> (last visited April 2, 2012).

¹⁶ Further information about NSTIC is available at <http://www.nist.gov/nstic/> (last visited April 2, 2012).

¹⁷ *See generally* Joe Waz & Phil Weiser, “Internet Governance: The Role of Multistakeholder Organizations, The Silicon Flatirons Roundtable Series on Entrepreneurship, Innovation, and Public Policy,” available at <http://www.silicon-flatirons.org/documents/publications/report/InternetGovernanceRoleofMSHOrgs.pdf> (last visited April 2, 2012).

the same dynamics that we often experience in regulatory rulemaking proceedings. In its role as a facilitator, the NTIA can best promote consensus building through outreach, communication and coordination amongst a broad set of stakeholders.

CONCLUSION

AT&T applauds the work of the NTIA in establishing a framework for fruitful discussion of these important issues, and looks forward to participating in the multistakeholder collaboration contemplated by the Privacy and Innovation Blueprint. AT&T remains committed to fostering greater consumer understanding of technology and of consumer privacy choices, and will work together with the NTIA, as well as other stakeholders in the community, to continue promoting a reasonable and effective privacy framework that encourages innovation and consumer confidence.

Respectfully submitted,

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