

April 2, 2012

VIA EMAIL TO PRIVACYRFC2012@NTIA.DOC.GOV

The Honorable Lawrence E. Strickling
Assistant Secretary for Communications and Information
National Telecommunications and Information Administration (NTIA)
U.S. Department of Commerce
1401 Constitution Avenue, NW, Room 4725
Washington, DC 20230

**Re: *Multistakeholder Process to Develop Consumer Data Privacy Codes of Conduct,*
Docket No. 120214135–2135–01**

Dear Assistant Secretary Strickling:

The undersigned trade associations and business groups, representing hundreds of thousands of U.S. companies from a wide variety of industry segments, are pleased to submit these collective comments in response to the National Telecommunications and Information Administration's (NTIA) request for comment on issues which it anticipates in advance of the forthcoming multi-stakeholder process. Our member companies are engaged in global commerce and the international exchange of consumer data for a wide range of purposes that benefit consumers and spur the growth of businesses and jobs. We and American consumers are the beneficiaries of today's "information economy" that, more rapidly than ever before, promotes greater efficiencies and generates new products and services that meet the public's ever-expanding needs. We are, therefore, highly sensitive to legislation, regulations or public policy proposals that risk endangering this very delicate economic environment or which ignore, for the sake or momentary political satisfaction, the enormous economic potential or consumer demand that is served by the responsible use of consumer data.

Because the stakes are so high for our businesses and the U.S. economy, NTIA's role as an impartial facilitator in this process will be paramount as various stakeholders initiate discussions on the development of consumer data privacy codes of conduct. We look forward to participating in this multi-stakeholder process, especially in today's turbulent economic environment, as businesses depend more than ever on having beneficial and trusted relationships with their customers. We also support NTIA's intentions to incorporate the views of all participants with the stated goal of generating a consensus on voluntary and legally enforceable privacy codes of conduct. It is with this understanding that we respectfully offer five suggestions that we believe will help NTIA ensure that its goal can be achieved with the full support of the business community in an open, consensus-building process:

- **A government-led multi-stakeholder process will be most effective if parts of it are conducted publicly and parts are conducted in private and off-the-record.** Businesses will not, and should not be expected to, reveal proprietary information or trade secrets about their practices in public to groups that may leak such information to the press, issue critical public statements designed to influence the outcome of the deliberations, file complaints with federal agencies and/or bring class action suits against the same companies that are conscientiously engaged in the multi-stakeholder process. Discussions among companies operating in a competitive marketplace are most likely to be productive when there is ample room for private and candid discussion. Furthermore, as industry likely will bear the financial and administrative burdens of implementing any voluntary codes of conduct, industry should be given the opportunity to draft the initial

versions of these codes as it has done on existing industry codes of conduct. Then, the open multi-stakeholder process run by NTIA could serve as an appropriate venue for all stakeholders to review and provide comment on the code and recommended revisions.

- **A proposed code of conduct should not be rejected simply because all issues have not been fully addressed; perfection must not be the enemy of progress.** Many issues that may be considered by the multi-stakeholder process are complex in nature with no obvious or easily-implemented solution. Lack of complete consensus on all issues should not delay adoption of a code that would increase consumer protections.
- **All participating stakeholders should be required to accompany recommendations with empirical data regarding perceived consumer harms and cost-benefit analyses of proposed solutions.** If the multi-stakeholder process is to be a serious undertaking, it is essential that *all* stakeholders who participate demonstrate that their proposed solutions would address measurable financial or actual harms to consumers, and that the proposals' intended benefits to consumers and the U.S. economy would outweigh the administrative and financial costs of their development and implementation.
- **NTIA should provide information to all participants about previous multi-stakeholder processes and the key elements of successful efforts to develop voluntary codes of conduct.** Prior to convening any multi-stakeholder process to develop new codes of conduct, NTIA should identify and evaluate the strengths and weaknesses of previous multi-stakeholder processes so that participants, once engaged, can benefit from the experience of the past. NTIA should also provide summaries of successful and unsuccessful efforts to develop voluntary codes, including, if the effort was unsuccessful, a discussion of the reasons why those efforts ultimately failed.
- **NTIA should adhere to the Obama Administration's commitment not to substitute its own judgment for the stakeholders' judgment in the development of any codes of conduct in the multi-stakeholder process.** The Obama Administration has already set forth its general views in its *Privacy and Innovation Blueprint*. Accordingly, we agree with NTIA that it should limit its role to facilitating the process and should avoid taking positions, either in public or in private, on substantive issues under development.

Thank you for the opportunity to comment on the forthcoming multi-stakeholder process. We look forward to working with NTIA to help encourage a productive and consequential multi-stakeholder process.

Sincerely,

Consumer Data Industry Association
Consumer Electronics Association
National Business Coalition on E-Commerce and Privacy
National Retail Federation
NetChoice
U.S. Chamber of Commerce