

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Consumer Watchdog Petition for Rulemaking to
Require Edge Providers to Honor 'Do Not Track'
Requests RM-11757

ORDER

Adopted: November 6, 2015

Released: November 6, 2015

By the Chief, Wireline Competition Bureau:

1. In this Order, we dismiss Consumer Watchdog's request that the Commission "initiate a rulemaking proceeding requiring 'edge providers' (like Google, Facebook, YouTube, Pandora, Netflix, and LinkedIn) to honor 'Do Not Track' Requests from consumers." The Commission has been unequivocal in declaring that it has no intent to regulate edge providers. We therefore find that, pursuant to section 1.401(e) of our rules, the Consumer Watchdog Petition "plainly do[es] not warrant consideration by the Commission."

2. Section 222 of the Communications Act governs telecommunications carriers' protection and use of information obtained from their customers or other carriers, and calibrates the protection of such information based on its sensitivity. The Commission has adopted rules implementing section 222's privacy protections with respect to providers of voice services, has amended those rules over time to respond to emerging threats to consumer privacy, and has vigorously enforced those rules.

3. Earlier this year, when the Commission reclassified broadband Internet access service (BIAS) as a telecommunications service under Title II of the Communications Act, it declined to forbear from applying section 222 to BIAS providers. The Commission found that broadband providers "serve

1 See Consumer Watchdog, Petition for Rulemaking to Require Edge Providers to Honor 'Do Not Track' Requests, at 1 (filed June 15, 2015) (Consumer Watchdog Petition).

2 See infra para. 3.

3 47 C.F.R. § 1.401(e) ("Petitions which are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.")

4 See, e.g., Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services, CC Docket No. 96-115, WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6929, 6931-32, paras. 3, 7-9 (2007); see also TerraCom, Inc and YourTel America, Inc., Notice of Apparent Liability for Forfeiture, File No.: EB-TCD-13-00009175, 29 FCC Rcd 13325 (2014) (TerraCom NAL); AT&T Services, Inc., Order, File No.: EB-TCD-14-00016243, 30 FCC Rcd 2808 (Enforcement Bur. 2015) (AT&T Order).

5 See Protecting and Promoting the Open Internet, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, paras. 331-425, 462 (2015) (2015 Open Internet Order); 47 U.S.C. § 222. The Commission defined broadband Internet access service as a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints,

(continued ...)

as a necessary conduit for information passing between an Internet user and Internet sites or other Internet users, and are in a position to obtain vast amounts of personal and proprietary information about their customers.”⁶ Recognizing, however, that the existing rules were written for voice services, the Commission held it was “not persuaded that the Commission’s current rules implementing section 222 necessarily would be well suited to broadband Internet access service.”⁷ It therefore forbore from applying the section 222 rules to BIAS services, “pending adoption of rules to govern broadband Internet access service in a separate rulemaking proceeding.”⁸ At the same time, the Commission specified that in reclassifying BIAS, it was not “regulating the Internet, *per se*, or any Internet applications or content.”⁹ Rather, as the Commission explained, its “reclassification of broadband Internet access service involves only the transmission component of Internet access service.”¹⁰

4. Consumer Watchdog’s request that “the Commission should, in addition to the CPNI rules it intends to adopt, promulgate rules protecting the authorized use of consumers’ personal information by requiring edge providers to honor ‘Do Not Track’ Requests” is inconsistent with the Commission’s articulation of the effect of its reclassification of BIAS and the scope of the privacy practices it stated that it intends to address pursuant to that reclassification.¹¹ We therefore find that the Consumer Watchdog Petition plainly does not warrant consideration by the Commission pursuant to section 1.401(e) of the Commission’s rules.

5. Accordingly, IT IS ORDERED that, pursuant to sections 0.91, 0.291, and 1.401(e) of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 1.401(e), Consumer Watchdog’s Petition for Rulemaking to Require Edge Providers to Honor ‘Do Not Track’ Requests IS DISMISSED.

6. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission’s rules, 47 C.F.R. § 1.102(b)(1), that this Order IS EFFECTIVE upon release. Petitions for reconsideration under section 1.429 of the Commission’s rules, 47 C.F.R. § 1.429, or applications for review under section 1.115 of the Commission’s rules, 47 C.F.R. § 1.115, may be filed within thirty days of the date of public notice of this Order.

FEDERAL COMMUNICATIONS COMMISSION

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including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. *See 2015 Open Internet Order*, 30 FCC Rcd at 5746-47, para. 337.

⁶ *See id.* at 5821, para. 463.

⁷ *Id.* at 5823, para. 467.

⁸ *See id.* at 5820, 5823, paras. 462, 467.

⁹ *Id.* at 5775, para. 382; *see also id.* at 5724, para. 282 n.725 (“In response to parties expressing concerns that section 706 could be read to impose regulations on edge providers or others in the Internet ecosystem, we emphasize that today’s rules apply only to last-mile broadband providers.” (internal citations omitted)).

¹⁰ *Id.* at 5775, para. 382.

¹¹ Consumer Watchdog Petition at 2.