Comments of the Internet Infrastructure Coalition (i2Coalition)

May 27, 2016

Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

WC Docket 16-106; *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*

Dear Secretary Dortch:

We thank the FCC for the opportunity to comment on in response to the NPRM and the accompanying proposed rules for Protecting the Privacy of Customers of Broadband and Other Telecommunications Services.[1]

The Internet Infrastructure Coalition ("i2Coalition") is an industry group that represents the interests of Internet and technology companies on Capitol Hill and before regulatory agencies. The i2Coalition represents the companies that build the Internet's infrastructure above the telecommunications service layer. Examples are web hosting and cloud infrastructure providers, data centers, domain registries and registrars, and other companies that provide Internet-related services. In other words, most of our members would fall under the generally understood meaning of "edge provider."[2]

i2Coalition believes that an open and free Internet drives economic growth and enhances the lives of people across the United States and around the globe. Our organization promotes policies that foster continued development and expansion of a free and open Internet, without interference by dominant providers or government, except as is necessary to maintain openness and customer choice and to facilitate continued innovation in each of the abstraction layers. Some regulatory control over those who provide internet access, including protection of subscriber privacy and security of user information is necessary in order to protect users and maintain openness in the rest of the ecosphere.

i2Coalition is encouraged that proposed rules apply only to BIAS and do not extend privacy oversight authority to providers of edge services. For example, some i2Coalition members act as domain name registrars and some also operate domain name registries. The proposed rules

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[1] *In the Matter of Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106, FCC 16-39, Notice of Proposed Rulemaking (rel. April 1, 2016), published at 81 Fed. Reg. 23359.

[2] *See, e.g., In the Matter of Preserving the Open Internet; Broadband Industry Practices*, Report and Order, FCC 10-201,¶2, note 2 and ¶20, 25 FCC Rcd 17905(rel Dec.2010) ("We use "edge provider" to refer to content, application, service, and device providers, because they generally operate at the edge rather than the core of the network."). Some i2Coalition members were specifically identified as edge providers by the Court in the *Verizon v. FCC* decision. *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014).

would treat domain name information as CPNI since it can constitute destination and location information and is personally identifiable.[3] The proposed rules, however, only apply to BIAS providers and information the BIAS customer communicates to the BIAS provider as such. The CPNI rules do not apply to Internet registries and registrars. The information registrars and registries separately obtain while acting as such is not CPNI or subject to the rules.

We strongly encourage the Commission to retain the contemplated scope and application of the rules, including the entities that are and not subject to them. Doing so is fair and appropriate given the fundamental differences between broadband and edge providers. The NPRM correctly recognizes the distinction and the several reasons for this difference in treatment so we will not repeat them here, other than to repeat the obvious fact that registries and registrars are not providing a Title II service – which means §222 cannot apply to their activities.

On the other hand, application of §222 to BIAS is a necessary consequence of Title II treatment. Although BIAS is properly treated as a telecommunications service it is not exactly the same as legacy analog or digital telephone service. The business model and several technical aspects of the service are different. The Commission properly ruled that its existing CPNI rules should not be imposed on BIAS, and chose to develop specialized rules for BIAS in this proceeding. Some customer information created while customers are using BIAS easily meets the definition of CPNI in §222(h)(1), but other information revealed to or created by BIAS providers does not, even though it is still "proprietary" as that term is used in §222(a). The task at hand will require identification of all the differences between proprietary information generated from provision of legacy telecom services and that related to BIAS, and then striking the proper balance between user privacy and BIAS providers' legitimate needs and uses for that information in order to provide high-quality BIAS to mass-market customers. BIAS providers should not be allowed to use this information for purposes unrelated to the provision of BIAS, unless the customer expressly consents to other uses through some form of "opt in." BIAS providers should not be allowed to use this information to gain a competitive or other untoward advantage over the edge providers that users interact with as part of the Internet experience.

In sum, i2Coalition very much agrees that rules are needed. i2Coalition generally supports the intent behind the proposed rules and much of the text. Some tweaking may be necessary if actual problems with the proposed text are identified. We intend to review the initial comments and provide feedback concerning the other participants' proposals and recommendations. i2Coalition looks forward to continuing to provide insight and perspective on behalf of its members as the Commission proceeds to promulgate final rules regarding this important project.

Sincerely,

David Snead
Policy Chair, i2Coalition

[3] *See* NPRM ¶¶41, 46; Proposed 64.2003(h) and (o).