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The Honorable John Dingell
Chairman
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Joe Barton
Ranking Member
House Committee on Energy and Commerce
2322-A Rayburn House Office Building
Washington, DC 20515

The Honorable Edward Markey
Chairman
House Committee on Energy and Commerce –
Subcommittee on Telecommunications and the Internet
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Cliff Stearns
Ranking Member
House Committee on Energy and Commerce –
Subcommittee on Telecommunications and the Internet
2322-A Rayburn House Office Building
Washington, DC 20515

Dear Congressmen Dingell, Barton, Markey and Stearns:

I am responding to your letter to Randall Stephenson, Chairman and CEO of AT&T Inc., dated August 1, 2008, regarding online advertising, and specifically the extent to which AT&T utilizes or enables behavioral advertising capabilities. We are pleased to share relevant information on these important issues.

AT&T does not engage in the behavioral advertising that is the focus of your inquiry,¹ specifically the tracking of a consumer's overall web search and web browsing activities – by tracking either the person or a particular computer – to create a distinct profile of the consumer's

¹ We note that the responses of certain companies such as Google suggest that your inquiry is narrow and focused only on a single technology: deep-packet-inspection. We do not read the questions so narrowly. Indeed, to do so suggests that the significant policy questions posed here depend on the technology at issue. We understand your letter to be a clear inquiry into end-user/customer privacy as a whole and are responding accordingly.

online behavior (“Overall Behavioral Targeted Advertising”).² Overall Behavioral Targeted Advertising can take many forms. It can, for instance, involve the use by an Internet service provider (“ISP”) of technologies to capture a user’s full Internet browsing activities and experience across unrelated websites. These more ISP-specific methodologies are not, however, the only – and certainly are not nearly the most prevalent – forms of Overall Behavioral Targeted Advertising. Advertising-network operators such as Google have evolved beyond merely tracking consumer web surfing activity on sites for which they have a direct ad-serving relationship. They now have the ability to observe a user’s entire web browsing experience at a granular level, including all URLs visited, all searches, and actual page-views. Techniques include the ad network “dropping” third-party tracking “cookies” on a consumer’s computer to capture consumer visits to any one of thousands of unrelated websites; embedding software on PCs; or automatically downloading applications that – unbeknownst to the consumer – log the consumer’s full session of browsing activity.

Ad networks and other non-ISPs employ these methodologies at the individual browser or computer level and they are as effective as any technique that an ISP might employ at creating specific customer profiles and enabling highly targeted advertising. Already ad networks and search engines track and store a vast trove of data about consumers’ online activities. Google, for instance, logs and stores users’ search requests, can track the search activity by IP address and browser, and can even correlate search activities across multiple sessions, leading to the creation of a distinct and detailed user profile. It further has access to enormous amounts of personal information from its registered users, which its privacy policy expressly confirms can be combined with information from other Google services or third parties for the “display of customized content and advertising.” And it even scans emails from non-Gmail subscribers sent to Gmail subscribers for contextual advertising purposes. Thus, if anything, the largely invisible practices of ad-networks raise even greater privacy concerns than do the behavioral advertising techniques that ISPs could employ, such as deep-packet-inspection, which have primary application beyond mere targeted advertising, including managing network congestion, detecting viruses and combating child pornography. In short, the privacy and other policy issues surrounding Overall Behavioral Targeted Advertising are not technology-specific. The relevant touchstones are the manner in which consumer information is tracked and used, and the manner in which consumers are given notice of and are able to consent to or prohibit such practices. Those factors are entirely technology-neutral.

If done properly, however, Overall Behavioral Targeted Advertising could prove quite valuable to consumers and could dramatically improve their online experiences, while at the same time protecting their privacy. But because Overall Behavioral Targeted Advertising goes beyond the

² See letter to Neil Smit, President and CEO, Charter Communications, from Congressman Markey and Barton, dated May 16, 2008 (“We are writing with respect to recent media reports that Charter Communications has announced plans to begin collecting information about websites that subscribers will visit and then disclosing such data to a firm called NebuAd. This firm, in turn, will use such data to serve ads to individual Charter customers on subjects directly related to their interests...”); letter to Tom Gerke, CEO, Embarq, from Congressmen Dingell, Barton and Markey, dated July 14, 2001 (“We are writing with respect to a recent test conducted by Embarq to tailor Internet advertising to the web-browsing patterns of individual Embarq subscribers.”)

simple practice of “targeting” limited to a consumer’s use of individual or related websites, and involves the more invisible practice of tracking consumer web activity across countless unrelated websites, it has unique implications for consumer privacy. For these reasons, if AT&T deploys these technologies and processes, and we have yet to do so, it will do so the right way, only after full and careful consideration of the relevant issues, and with a particular focus on what we believe are the pillars of any business practices that involve customer information: (1) give customers control over the use of their information; (2) ensure transparency; (3) protect customers’ privacy; and (4) give customers value. These principles – customer privacy, customer control, and transparency – should be the policy bedrock for Overall Behavioral Targeted Advertising regardless of whether the entity collecting, storing and analyzing online search and web browsing data is a search engine, an advertising network or an ISP. Indeed, we would encourage any entity that engages in Overall Behavioral Targeted Advertising to adopt such principles, and urge that any legal or regulatory framework that governs such practices embody these principles and be applied equally to all players in the online advertising ecosystem. Only then will consumers be protected and confidently be able to enjoy a safe and secure Internet experience.

Of course, AT&T does engage in some of the more ordinary and established aspects of online advertising. Like virtually every entity with a retail Internet presence, AT&T tracks usage on its own websites, such as att.com, in order to improve the online experience, optimize a particular site’s capabilities and ease-of-use, and provide the most useful information to consumers about AT&T’s products and services. In addition, like thousands of other businesses that operate websites, AT&T does business with advertising networks and has partnered with providers of online search. For example, on the AT&T broadband Internet access portal, AT&T makes space available for advertising provided by the Yahoo! advertising network, and users of the portal may be shown advertising that is based on their activity on that website. Also by way of example, we have arranged for the Google search box to appear on our my.att.net site. In short, we are no different than any other website publisher.³

Against this backdrop, AT&T below answers your enumerated questions.

1. Has your company at any time tailored, or facilitated the tailoring of, Internet advertising based on consumers’ Internet search, surfing, or other use?

As discussed above, AT&T has not engaged in the Overall Behavioral Targeted Advertising that is the focus of your inquiry. That is, AT&T does not at this time engage in practices that allow it to track a consumer’s search and browsing activities across multiple unrelated websites for the purpose developing a profile of a particular

³ Having sent an identical letter to a variety of entities that play a role in the online advertising space – particularly two of the most consequential players in online advertising, namely Google and Yahoo! – the committee will be able to obtain directly from those actors information on how they use information that they may collect from the operation of their ad networks, search engines, or otherwise. Obviously, as a website publisher, AT&T does not control the broader practices of ad networks or search engines.

consumer's online behavior.⁴ We are aware that certain companies have conducted trials of next-generation behavioral advertising technologies and techniques. AT&T has not conducted any such trials.

2. Please describe the nature and extent of any such practice and if such practice had any limitations with respect to health, financial, or other sensitive personal data, and how such limitations were developed and implemented.

As explained above, AT&T has not engaged in Overall Behavioral Targeted Advertising – either as part of a trial or a commercial deployment. Moreover, as we evaluate the available technologies and techniques, our focus is on providing both maximum value to consumers and the utmost protection for their personal information, including health- and finance-related information.

3. In what communities, if any, has your company engaged in such practice, how were those communities chosen, and during what time periods was such practice used in each? If such practice was effectively implemented nationwide, please say so.

As explained above, AT&T has not engaged in Overall Behavioral Targeted Advertising – either as part of a trial or a commercial deployment. Moreover, we would do so only after full and careful examination of the technological, privacy and legal considerations of any particular practice.

4. How many consumers have been subject to such practice in each affected community, or nationwide?

As explained above, AT&T has not engaged in Overall Behavioral Targeted Advertising – either as part of a trial or a commercial deployment.

5. Has your company conducted a legal analysis of the applicability of consumer privacy laws to such practice? If so, please explain what that analysis concluded.

As noted above, AT&T is carefully considering all aspects of this potentially sensitive area of Overall Behavioral Targeted Advertising. While not done in the context of any particular trial or application of a behavioral advertising technology, AT&T is evaluating the applicable legal framework.

⁴ Beginning in July 2000, AT&T Corp., in connection with its WorldNet dial-up Internet access service, offered a dial-up service for \$4.95/month wherein the customer affirmatively would agree to download additional software that would facilitate the tracking of the customer's web-browsing activity. Based on the customer's advance, affirmative consent, AT&T Corp. provided the information to its online advertising business partners (FreeI and Predictive Networks) on an anonymous basis (i.e., subscribers were identifiable only by a random, anonymous ID number) and these partners in turn delivered advertising to a distinct window on the Internet access portal based on the subscriber's individual interests. Once the data were analyzed, they were discarded. AT&T Corp. discontinued the service in January 2002.

6. How did your company notify consumers of such practice? Please provide a copy of the notification. If your company did not specifically or directly notify affected consumers, please explain why this was not done.

As explained above, AT&T has not engaged in Overall Behavioral Targeted Advertising – either as part of a trial or a commercial deployment. Nonetheless, AT&T recognizes that the manner in which customers are given notice of the tracking of their information and Internet usage for advertising purposes is central to ensuring customer control and the privacy of customer information. Accordingly, as part of its consideration of Overall Behavioral Targeted Advertising technologies and approaches, AT&T is giving full and careful consideration to the proper form of customer notice.

7. Please explain whether your company asked consumers to “opt in” to the use of such practice or allowed consumers who objected to “opt out.” If your company allowed consumers who objected to opt out, how did it notify consumers of their opportunity to opt out? If your company did not specifically or directly notify affected consumers of the opportunity to opt out, please explain why this was not done.

As explained above, AT&T has not engaged in Overall Behavioral Targeted Advertising – either as part of a trial or a commercial deployment. Nonetheless, AT&T believes that it is essential to ensuring customer control and the privacy of customer information that customers/users be given the opportunity to consent to the tracking and use of their information before any Overall Behavioral Targeted Advertising is implemented. Accordingly, as part of its consideration of Overall Behavioral Targeted Advertising technologies and approaches, AT&T will insist upon the proper form of affirmative election by the user/customer in advance of implementing any such program, a concept often generically referred to as “opt-in.”

8. How many consumers opted out of being subject to such practice?

As explained above, AT&T has not engaged in Overall Behavioral Targeted Advertising – either as part of a trial or a commercial deployment. Accordingly, we have no information concerning the rate of customer opt-out from such practices.

9. Did your company conduct a legal analysis of the adequacy of any opt-out notice and mechanism employed to allow consumers to effectuate this choice? If so, please explain what that analysis concluded.

As noted above, AT&T is carefully considering all aspects of this potentially sensitive area of Overall Behavioral Targeted Advertising. While not done in the context of any particular trial or application of a behavioral advertising technology, AT&T is evaluating the applicable legal framework.

10. What is the status of consumer data collected as a result of such practice? Has it been destroyed or is it routinely destroyed?

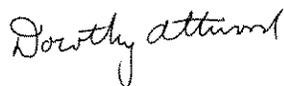
As explained above, AT&T has not engaged in Overall Behavioral Targeted Advertising – either as part of a trial or a commercial deployment. Accordingly, we have not collected any related customer data for Overall Behavioral Targeted Advertising purposes.

11. Is it possible for your company to correlate data regarding consumer Internet use across a variety of services or applications you offer to tailor Internet advertising? Do you do so? If not, please indicate what steps you take to make sure such correlation does not happen. If you do engage in such correlation, please provide answers to all the preceding questions with reference to such correlation. If your previous answers already do so, it is sufficient to simply cross-reference those answers.

As a technical matter, it would theoretically be possible to correlate data regarding consumer Internet use across various platforms, e.g., to identify usage on sites broken down by wireline broadband users versus wireless users. Nonetheless, AT&T has not designed, built or funded the technological capability required to do so. As noted above, AT&T is taking a deliberate approach to next-generation tracking and advertising-delivery technologies.

We trust that the foregoing will assist your examination of these issues. Please let us know if you require further information.

Respectfully submitted,



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