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Office of the Secretary  
Federal Trade Commission  
Room H-135 (Annex N)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

**Re: Online Behavioral Advertising Proposed Self-Regulatory Principles  
Comments of AT&T Inc.**

AT&T Inc. submits the following comments in connection with the self-regulatory principles for behavioral advertising recently proposed by FTC staff (the "Proposed Principles").<sup>1</sup>

***The Appropriate Privacy Paradigm***

AT&T is the nation's leading provider of high speed Internet access services, a first tier provider of Internet backbone and web hosting services, one of the country's top advertisers in both on-line and traditional media, and a publisher of web sites with significant audiences. As such, perhaps more than any other commenter in this proceeding, AT&T has a broad, balanced and critical interest in the appropriateness and feasibility of the Proposed Principles.

AT&T endorses the Commission's decision to draft self-regulatory principles as an alternative to more prescriptive regulatory intervention in the vibrant Internet services marketplace. Self-regulatory principles, if properly crafted and applied in a neutral manner to a variety of online advertising business models, can assure that consumers receive effective communications that enable informed decisions in an online environment. By contrast, "one size fits all" direct regulation, particularly in a diverse and technologically evolving marketplace, could ultimately frustrate the realization of valid public policy goals. The need for effective consumer communication and consent in certain situations is no less diminished in the online environment, but meaningful communication and consent can take place today using methods and mechanisms that were unimaginable in recent years.

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<sup>1</sup> Online Behavioral Advertising: Moving the Discussion Forward to Possible Self-Regulatory Principles, available at <http://www.ftc.gov/os/2007/12/P859900stmt.pdf>.

Policymakers, therefore, should take care not to constrain the range of solutions that could address the public policy interests that suffuse each Principle. The use of flexible behavioral norms as opposed to prescriptive mandates is, therefore, most appropriate.

Moreover, the Commission should ensure that the application of these Principles does not favor or discriminate against specific business models or online techniques. There is a broad range of online advertising services and technologies, each with varying degrees of consumer privacy implications. Providing the consumer appropriate and meaningful disclosures of how online behavior is tracked, retained or used in order to deliver targeted advertising, and allowing the consumer consequently to make informed choices, should be the hallmarks of any online experience. The focus of the principles should be on the essential elements of protecting consumer privacy, and not on a narrow definitional issue of what constitutes behavioral advertising.

For instance, there are contextual services that can involve very personal information about a consumer, such as the contents of an email, an instant message or a chat room posting. A consumer who is delivered an online advertisement for heart medication after conducting an Internet search for “heart attacks” would likely have a far different reaction if the same advertisement were delivered following the consumer’s emailing a family member about a recent heart attack. Even information that is ostensibly not personally identifying may raise privacy concerns. Web surfing tracked by advertising companies across unaffiliated websites, as well as histories of search results, could possibly result in the revelation of personal information including health conditions, financial status and sexual or political preference, notwithstanding the lack of a direct link to personal information. The Commission should carefully consider the need for meaningful customer communications in the range of online advertising business practices, while also preserving flexibility for innovation and the customer benefits that flow from online advertising.

### *AT&T’s Approach to Customer Privacy*

AT&T has developed three essential principles with respect to our customers’ use of the Internet:

1. Consumers should have meaningful choices about how information about them and their use of the Internet is collected and used.
2. Clear and accurate information is the cornerstone of our customers’ ability to make meaningful choices.
3. The security of our customers’ data is paramount and will continue to be safeguarded using best practices.

AT&T bases these principles on over a century of practical experience in safeguarding hundreds of millions of customers' information, and doing so as communications technologies continuously changed.

While technology and consumer services will continue to evolve rapidly, applying these three core principles can allow consumers the maximum opportunity to reap the benefits of such changes in the market. To this end, AT&T advocates the following:

1. The Principles should be neutral in their application to the entire range of business models and entities participating in the Internet services market.
2. Companies should have the opportunity to develop new products and business models that do not conflict with these Principles of consumer notice, choice and data security.
3. Entities that actually collect and use data for behavioral advertising purposes should have the primary responsibility for providing notice and meaningful choice to consumers.
4. Any resulting self-regulatory privacy framework should neither materially degrade the user experience on the Internet nor deter businesses from developing value-based Internet products and services.

### ***Specific Comments on the Proposed Principles***

#### **Principle No. 1: Disclosure of Behavioral Advertising Collection Practices.**

The behavioral norms associated with consumer disclosures and consumer choice that are established by the first Principle are consistent with fundamental notions of transparency and consumer control.<sup>2</sup> While targeted advertising adds value for many consumers seeking a more customized and personalized Internet experience, consumers have a right to know whether and how certain information is collected for this purpose. Armed with this knowledge, consumers should have the ability to freely choose whether or not certain information is collected and used for behavioral advertising.

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<sup>2</sup> The first principle states in its entirety, “(e)very website where data is collected for behavioral advertising should provide a clear concise, consumer-friendly, and prominent statement that (1) data about consumers’ activities on-line is being collected at the site for use in providing advertising about products and services tailored to individual consumer’s interest, and (2) consumers can choose whether or not to have their information collected for such a purpose. The website should also provide consumers with a clear, easy-to-use, and accessible method for exercising this option.”

Nevertheless, AT&T supports the FTC encouraging further dialogue on the implications of the term “website” in the context of information collection and use for behavioral advertising, so as to avoid any inadvertent technical limitations on the appropriate point of meaningful consumer notice and choice. This question is critical because AT&T respectfully suggests that the Principle tends to oversimplify the responsibility for adherence. While a web page might indeed be a logical point for a consumer disclosure, the Principle as written may not fully account for the complex relationship of website owners, Internet advertising publishers and advertisers, or the technological differences in various business models. For example, it is unclear whether the use of the term “website” is meant to signal disclosure at a website’s home page, or on each individual page. While homepages may easily be bypassed, individual page disclosures may not be practical given the number of pages within any one site. It would be excessively burdensome and complicated for the website publisher to track, or for the consumer to indicate, consent on a page-by-page basis. Furthermore, repeated form disclosures de-sensitize consumers to the importance of the information relayed.

In order to apply the Principle to the appropriate entity (the entity that is actually collecting information), the FTC might consider a slight revision to its first principle so that the terms “Any entity,” “collected and used for such a purpose,” and “The on-line data collecting entities” replace the terms “Every website,” “collected for such a purpose,” and “The website,” respectively. These changes would clearly place responsibility on the relevant party and in a context that the consumer could understand.

AT&T also urges the FTC to apply its general principles of notice and choice in a fact-specific manner that is appropriate for a given type of data or advertising practice (be it context-based, or sequence or “history”-based). The type of notice and choice provided to consumers should correspond to the level of privacy concerns created by the specific type of data being collected and advertising practice being employed. The Commission should not establish unique notice and choice requirements only for a specific category of behavioral advertising services.

#### Principle No. 2: Limitation on Data Retention.

The second Principle goes directly to the issue of data security and consumer confidence, and is consistent with the FTC’s approach in urging businesses not to keep consumer information any longer than necessary.<sup>3</sup> AT&T endorses the Principle, among other reasons, because it would not impose a specific-duration data retention

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<sup>3</sup> The second principle states in its entirety, “(a)ny company that collects and/or stores consumer data for behavioral advertising should provide reasonable security for that data. Consistent with the data security laws and the FTC’s data security enforcement actions, such protections should be based on the sensitivity of the data, the nature of a company’s business operations, the types of risks a company faces, and the reasonable protections available to a company. Companies should retain data only as long as necessary to fulfill a legitimate business or law enforcement need.”

requirement applicable to all data and all entities for all purposes. Instead, it would allow for an individual determination based on a number of factors.

Principle No. 3: Affirmative Express Consent for Material Changes to Privacy Promises.

The third Principle is not, like the second Principle, by its express terms tied to behavioral advertising.<sup>4</sup> It reflects a general recognition that there are circumstances (in this case, a company's use of data in a manner materially different from any promises made when the company collected the data) in which the need for meaningful consumer communication is heightened. AT&T accepts this concept as axiomatic and it is reflected in AT&T's own policies. However, the Commission should recognize that meaningful communication and consent can take place today using methods and mechanisms that were unimaginable in recent years.

Clear, conspicuous communication of changes in privacy policies, even material changes, may take place between a service provider and a customer without the operational challenges of the traditional consent options of the analog world. Communication can be clear, and consumer choice and consent can be meaningful, in a variety of ways and circumstances. AT&T strongly believes that, in order to flexibly accommodate all legitimate business models, the FTC should focus on a requirement of "informed consent" and not on the technical ways in which a consumer might express that consent. AT&T suggests that a blanket requirement that each consumer respond in an affirmative manner – especially in cases where the consumer's identity in conjunction with the behavioral data is otherwise unknown – would hinder completely legitimate activities and ignores the importance placed on the initial notice and resultant consumer choices.

In any event, the FTC should categorically refuse to announce that policies underlying the Principle are inapplicable to a particular class or activities or business models. As a matter of public policy, all consumers are entitled to be made aware of how information is collected and used by third parties for advertising purposes in the context of the consumer's Internet usage. Armed with this information, consumers should be able to make meaningful choices about the way they use the Internet. In any event, it is fundamental that all companies should keep their promises with respect to

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<sup>4</sup> This principle states in its entirety, "(a)s the FTC has made clear in its enforcement and outreach efforts, a company must keep any promises that it makes with respect to how it will handle or protect consumer data, even if it decides to change its policies at a later date. Therefore, before a company can use data in a manner materially different from promises the company made when it collected the data, it should obtain affirmative express consent from affected consumers. This principle would apply in a corporate merger situation to the extent that the merger creates material changes in the way the companies collect, use, and share data."

how they handle or protect consumer data, regardless of the methods they use to collect and subsequently use such data.

In turn, companies should be free to develop products and services that facilitate such consumer choice without undermining service provider commitments or degrading the consumer's Internet experience.

Principle No. 4: Express Affirmative Consent for Sensitive Information.

Finally, the FTC has proposed a Principle of affirmative express consent to using sensitive data for behavioral advertising.<sup>5</sup> There is, however, as yet no universal definition for "sensitive information;" thus, establishing a different consent standard based on that concept would be difficult to implement and enforce. Such data as Social Security number, financial account information and medical prescriptions may be the most obvious examples of sensitive information, but ruminations, comments and observations in e-mails, text messages and instant messages to a friend, or postings in a special interest chatroom are likely to be viewed as sensitive information by most consumers and may also merit meaningful consent before such information is collected and used by third parties. Further, there may be information collected in a behavioral advertising data collection context that, while nominally "sensitive," would nevertheless never be linked to the specific identity of a specific individual.<sup>6</sup>

Indeed, the first Principle already directly addresses the concerns sought to be addressed by the Fourth Principle; this is particularly true because a wide range of laws have already been enacted to protect many of the specific types of information that consumers would consider sensitive or proprietary, and entities operating in the Internet space are required to comply with them. In any event, in the absence of any established or uniform understanding of what "sensitive data" are, it is premature to establish a particular prescriptive approach to management of that data to the extent it may be subject to collection in a behavioral advertising context.

*Call for Additional Comments*

AT&T is not advocating a business-as-usual approach. It believes that a uniform application of the Proposed Principles is a necessary evolution for consumer confidence in the online world. These Principles are an excellent starting point for a vigorous dialogue that should result in a self-regulatory paradigm that will accommodate a diverse range of market-driven solutions that are sufficiently tailored to address consumer

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<sup>5</sup> This principle states in its entirety, "(c)ompanies should only collect sensitive data for behavioral advertising if they obtain affirmative express consent from the consumer to receive such advertising."

<sup>6</sup> For example, sensitive data subject to express affirmative consent requirements should not be defined to include aggregate information about visits to certain classes of websites dealing with medical conditions.

privacy. AT&T urges the FTC to establish further opportunities for public comment in this proceeding, including an opportunity to file reply comments.

Very Truly Yours,

*Bruce R. Byrd /tk*

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