



February 18, 2011

VIA ELECTRONIC DELIVERY

Mr. Christopher Olsen  
Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

RE: Preliminary FTC Staff Report, *Protecting Consumer Privacy in an Era of Rapid Change*

Dear Mr. Olsen:

American Trucking Associations, Inc. ("ATA") is pleased to submit comments on the Preliminary FTC Staff Report, *Protecting Consumer Privacy in an Era of Rapid Change*, dated December 2010 (the "Report"). ATA is the national trade association representing the trucking industry<sup>1</sup> and, through its members' interface with customers and consumers, is vitally interested in consumer privacy issues that impact the nation's trucking fleet. Members of ATA have long recognized that respect for customer privacy makes good business sense and is fundamental to earning and retaining the trust of customers in our industry.

ATA believes the Report makes an important contribution to the ongoing discussion of the appropriate scope and nature of consumer privacy regulation in the United States. We understand the Report to propose a framework for policymakers as they consider regulatory approaches to privacy, and for the business community as a guide with respect to best practices. With that context in mind, we have identified two particular points on which we would like to submit comments to the Commission. We trust that other members of the business community, as well as policymakers, consumers and other interested parties will submit comments addressing many of the other issues raised by the Report.

**Point 1: Scope of the Proposed Framework**

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<sup>1</sup> ATA is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Its membership includes more than 2,000 trucking companies and industry suppliers of equipment and services. Directly and indirectly through its affiliated organizations, ATA encompasses over 34,000 companies and every type and class of motor carrier operation.



The scope of the proposed framework extends beyond personally identifiable information to “consumer data that can be reasonably linked to a specific consumer, computer or device”<sup>2</sup> (“Covered Data”).

**Comments:**

The scope of the proposed framework should be clearly defined and only as broad as is necessary to achieve the goal of protecting consumer privacy. A scope that is difficult for those subject to the framework to discern, or that establishes obligations not supported by policy, will create uncertainty and impose unnecessary burdens on commerce and trade.

We believe the scope as drafted is unclear. Does the Commission intend for Covered Data to constitute:

- (A) Personally identifiable information (“PII”),<sup>3</sup> plus information that is identifiable to a consumer’s computer or device; or
- (B) PII, plus information that is identifiable to a consumer’s computer or device, *plus* information about a consumer that is not identifiable to the consumer (and thus not PII), but is capable of being linked to a consumer?

In ATA’s view, the definition in (B) is overbroad. Covered Data could conceivably extend to any business information relating to a company’s sales, fulfillment operations and billing functions with respect to consumer transactions. Businesses would need to analyze their corporate information repositories to identify information that, while not identifiable to consumers, could be; and would subject broad categories of business information – without regard to any associated consumer privacy interests or to whether the information is *ever* identified to a particular consumer – to standards such as consent to uses that are not “commonly accepted” and to rights of access. In addition, if information is capable of being linked to a consumer, but is not actually identifiable to that consumer, then how would a business provide notice or consumer choice?

We would request the Commission to clarify the intent of the scope of Covered Data and permit further opportunity for public comment on the updated scope.

**Point 2: Practices That Require Meaningful Choice**

The Report states that certain types of information are sensitive and require “additional protection through enhanced consent.”<sup>4</sup> This additional protection would require companies to “seek affirmative express consent” before collecting, using or disclosing sensitive information. The Report identifies “precise

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<sup>2</sup> Report at v.

<sup>3</sup> Defined as information that identifies a natural person or relates to an identifiable natural person. See, e.g., Federal Trade Commission, *Online Profiling: A Report to Congress*, 4 n.14 (2000), available at <http://www.ftc.gov/os/2000/06/onlineprofilingreportjune2000.pdf>.

<sup>4</sup> Report at 61.

geolocation data” (a term not defined by the Commission) as one example of sensitive information.

**Comments:**

“Sensitive information” should be defined narrowly and with great precision due to the prohibitory effect of requiring consumer consent to its collection and use. An overbroad or imprecise definition may have significant adverse consequences on commerce that are not justified by policy.

We understand the privacy concerns expressed in the Report with the ability to track a consumer’s precise physical location. But we believe that by not defining the term “precise geolocation data,” the Report could be construed to apply to location information that is unrelated to tracking consumer whereabouts. This is because the term could be interpreted very broadly. For example, one could argue street maps would now be deemed sensitive due to the inclusion of geolocation data (streets, cities and towns) that is “reasonably linkable” to consumers. A similar argument could be made for data that, through the application of various technologies such as geocoding, can enhance mapping data to enable businesses engaged in delivery operations to do so more efficiently, with reduced fuel consumption and reduced wear and tear on delivery vehicles and equipment. We would not anticipate this to be the Commission’s intent.

We believe the final Report should, accordingly, define “precise geolocation data” as consumer data that identifies the precise physical location of a consumer or of a consumer’s computer or mobile telecommunications device at a point in time. This would (a) align with the consumer privacy interest expressed throughout the Report of being able to control information about one’s precise whereabouts;<sup>5</sup> and (b) not impair the continued use of location-related data that is independent of tracking consumer locations.

The final Report should also affirmatively distinguish certain information from “precise geolocation data.” Businesses that provide transportation services, such as ATA’s members, heavily rely upon maps, commercial and residential location information, and precise data concerning pickup and dropoff locations. Emerging mapping technologies further enable transportation companies to significantly increase their efficiency and productivity. In addition, as transportation companies perform deliveries, they may collect additional information about routes and delivery locations, including geocode (a code for the location of a geospatial point on, above or beneath the surface of the earth) information for further enhancement of mapping systems. This information is publicly available and is not typically collected from consumers. Moreover, the information is independent of consumer identities, even though it may be “linkable”, as in the case of a residential address. We submit that these categories of information should be excluded from the framework. In addition, the application of sensitive information standards to these categories of information would have a materially adverse impact on operations of the transportation industry and many other

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<sup>5</sup> Report at ii, 21, 23, 34, 36, 47.

sectors of the economy that rely upon mapping data, without a corresponding policy justification based on consumer privacy considerations.

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ATA very much appreciates the opportunity to offer comments on the Report to the FTC. We would be happy to provide any further information or discuss any of the comments in this correspondence further, if you would like, at your convenience.

Respectfully submitted,

Prasad Sharma

Vice President and Deputy Chief Counsel