

**Before the  
FEDERAL TRADE COMMISSION  
Washington, D.C.**

In the Matter of

Protecting Consumer Privacy in an Era  
of Rapid Change: A Proposed  
Framework for Businesses and  
Policymakers

**COMMENTS OF GRAY TELEVISION, INC.**

Gray Television, Inc. (“Gray”) appreciates this opportunity to comment on the Preliminary Staff Report of the Federal Trade Commission (“FTC” or “Commission”), *Protecting Consumer Privacy in and Era of Rapid Change: A Proposed Framework for Businesses and Policymakers* (the “Report”).<sup>1</sup> Gray is a television broadcaster with stations in 19 states, as well as a strong and growing Internet presence. Although Gray, as a broadcaster regulated by the Federal Communications Commission (“FCC”), does not regularly appear before the FTC, we respect the important work the Commission has done since the 1990s to protect consumer privacy and know the agency has considerable influence over privacy practices, even in the absence of formal regulation.<sup>2</sup> Accordingly,

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<sup>1</sup> *Protecting Consumer Privacy in and Era of Rapid Change: A Proposed Framework for Businesses and Policymakers*, Preliminary Staff Report, Federal Trade Commission (December 2010).

<sup>2</sup> For example, following the publication of the FTC’s Proposed Framework that advocated for “Do Not Track” functionality, Google, Mozilla, and Microsoft implemented, or announced plans to implement, “Do Not Track” features into their respective Internet browsers. *See, e.g.*, “Keep your opt-outs,” posting of Sean Harvey and Rajas Moonka to Google Public Policy Blog (Jan. 24, 2011, 12:00 EST), *available at* <http://googlepublicpolicy.blogspot.com/2011/01/keep-your-opt-outs.html> (last visited Feb. 7, 2010); E-week.com, Brian Prince, “Mozilla Proposes Firefox ‘Do Not Track’ Feature” (Jan. 24, 2011), *available at* <http://www.eweek.com/c/a/Security/Mozilla-Proposes-Firefox-Do-Not-Track-Feature-242507/> (last visited Feb. 7, 2010); National Journal, Juliana Gruenwald, “Microsoft Unveils Do-Not-Track Feature In Browser,”

Gray believes the Commission should carefully weigh the potential impacts of even a proposed privacy framework and continue to support industry self-regulation.

Gray is concerned that the proposed privacy framework will significantly impair online advertising revenues, and thus, Gray's ability to serve local communities with online services, which are overwhelmingly made available without charge. In addition, Gray is concerned that the framework could have unintended adverse consequences on Internet innovation and Gray's ability to bring new technologies to its user community. These negative impacts could occur, even though actual damages from behavioral targeting are, at best, unclear, and even though self-regulatory efforts continue to foster responsible data practices. Accordingly, Gray urges the FTC to proceed with caution in the agency's formal and informal efforts to influence online advertising.

### ***Gray's Service to the Public***

For fifty years, Gray has brought high quality and community-oriented news coverage to small and mid-sized markets. Currently, Gray owns and operates 36 network affiliate television stations serving 30 markets throughout the United States. Gray's stations have enjoyed remarkable success by providing truly local, award-winning service, with an emphasis on local news and information content strongly desired by viewers.<sup>3</sup>

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(Dec. 7, 2010) *available at* <http://techdailydose.nationaljournal.com/2010/12/microsoft-unveils-donottrack-f.php> (last visited Feb. 7, 2010). These voluntary efforts occurred in the absence of any statutory imperative, regulatory requirement or even proposed rulemaking.

<sup>3</sup> Gray's stations are ranked number one in local news in 23 of 30 Designated Market Areas ("DMAs") (and number two in local news in six additional markets), and number one overall in 21 DMAs. With their dedication to local programming and service, Gray's stations have earned more than 500 national, state, and local news and community

As a trustee of the public's spectrum, broadcasters like Gray uphold the localism goals enshrined in both the Communications Act and the rules and policies of the FCC, by providing local news and other local content to members of the communities they serve.<sup>4</sup> Gray stations provide broadcast and online content through a variety of new media because they know that meeting the local news and information needs of communities is the lifeblood of a successful television station. In short, each Gray station views itself as an important part of the community it serves.

Gray's service to the public will increasingly involve new media and new technologies to deliver high-quality content to consumers. For example:

- Digital television technology ("DTV"), unlike its analog predecessor, allows television stations to provide multiple over-the-air channels to consumers. Gray has worked aggressively to use its digital television spectrum in this manner. With its state-of-the-art facilities, Gray stations currently "multicast" 39 secondary program streams to the public.<sup>5</sup> In addition to bringing more content to viewers, it is expected that DTV streams, including multicast streams, will increasingly be used to provide interactive services to consumers.

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services awards since 2003, including multiple Edward R. Murrow awards, regional Emmy awards, "Station of the Year" awards, "Most Outstanding News Operations" awards, and "Best Documentary" awards.

<sup>4</sup> The concept of localism is set forth in Title III of the Communications Act, and has been a prominent component of the FCC's regulation of broadcast stations for decades. *See, e.g., In the Matter of Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd. 12425, 12425-26 (citing *Deregulation of Radio*, 84 F.C.C.2d 968, 994 (1981) ("The concept of localism was part and parcel of broadcast regulation virtually from its inception.")). The FCC has consistently interpreted "localism" to require licensees to provide content that is responsive to the interests and needs of the communities they serve. *See id.* at 12425.

<sup>5</sup> These streams include seven local news/weather channels, one ABC affiliate, four FOX affiliates, seven CW affiliates, 18 MyNetworkTV affiliates, and two Universal Sports Network affiliates.

- Gray's stations are "going mobile." Gray is an active member of the Open Mobile Video Coalition ("OMVC"), which is dedicated to advancing the development and rollout of mobile DTV products and services. Two Gray stations participated in the nation-wide testing of Mobile DTV, and several more stations are expected to launch Mobile DTV service within the next year. Mobile DTV will allow users to receive Gray's content in more locations and in more ways, and could include interactive offerings and services that are customized to user preferences and/or interconnected with other new media.
- Gray continues to develop a diversified online presence. Each Gray station maintains an Internet website which provides up-to-date news and information content to the public, as well as breaking news and timely community events, comprehensive severe weather services such as weather alerts, school closings, satellite radars, maps, and other images. Live streaming video of newscasts and breaking news coverage, as well as video on demand. Each Internet site also includes local sports stories, scores and video highlights. In addition, every Gray station uses mobile Android and iPhone apps, as well as mobile/WAP sites, to deliver content to the community. Mobile content includes local news, weather, sports, and video on demand in addition to features such as interactive and zoomable radars, school closings, and sports scores. In addition, Gray also offers SMS alerts for breaking news alerts, weather alerts, forecasts, and sports scores.

In short, broadcasters are becoming multi-platform content providers, so that they can better serve the public.

***Restrictions on Online Advertising Could Undermine Gray's Ability to Fund the Free Content and Innovative Features Consumers Enjoy***

Gray's ability to offer free news and information to the public via digital multicasting, mobile DTV, Internet websites, and mobile apps, as well as Gray's capacity to expand and improve such services, relies on revenue generated via these offerings – usually from advertising. Indeed, because behavioral targeting tends to show consumers ads for products that interest them, broadcasters like Gray can earn a premium for showing such ads. In turn, Gray can provide better, more tailored services to those consumers. Proposed restrictions on online advertising, including “Do Not Track,” could substantially crimp advertising revenues by reducing the value of online ads. Should this occur, Gray would find it more difficult to provide free news and information content to the public via current and future media.<sup>6</sup>

Gray also is concerned about the unintended adverse consequences of the proposed privacy framework on Internet innovation. A framework that restricts online advertising, including behavioral targeting, would cut into revenue streams that help develop and bring to market new technologies that benefit consumers. Broadcasters are only one kind of company, of course, that is bringing innovative new products and services to the public. Where Gray does not develop online applications and services itself, it partners with third-parties to provide value-added services and features. The FTC has an interest in fostering these efforts and the resulting dynamic, competitive

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<sup>6</sup> The Report itself acknowledges these issues. For example, the Report notes that “[o]nline advertising helps support much of the content available to consumers online.” Report at 33-34. Consistent with this, the staff notes that Do Not Track regulation “should not undermine the benefits that online behavioral targeting has to offer, by funding online content and services and providing personalized advertisements that many consumers value.” Report at 67.

marketplace for new products. Yet, investments and new entrants that drive Internet innovation depend on an expectation of economic return. Restrictions on online advertising – a prevailing driver of online revenue – would have a chilling effect on Internet innovation

***Industry Self-Regulation Is the Best Approach to Protecting Privacy and Innovation***

Self-regulation, including voluntary standards of conduct developed by industry, is the best approach to addressing privacy concerns while preserving the economic drivers that support internet innovation. Strict regulations may harm innovation and consumer service, and likely would be overtaken by new technologies and consumer practices over time. Self-regulation, on the other hand, will allow the industry to respond to new and unforeseen issues in ways that do not stifle innovation and service to the public. Indeed, recent self-regulatory programs by the entities like the Direct Marketing Association, the Interactive Advertising Bureau, the Network Advertising Initiative, TRUSTe, the AICPA's WebTrust, and BBBOnLine have gone a long way towards developing and improving data privacy standards for behavioral targeting.<sup>7</sup> Efforts such as these will protect consumer privacy and respond to future technological and marketplace developments.

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<sup>7</sup> See Report at 27-28. For example, the American Association of Advertising Agencies, Association of National Advertisers, Direct Marketing Association, Interactive Advertising Bureau, and Council of Better Business Bureaus developed a *Self-Regulatory Principles for Online Behavioral Advertising* in July 2009 (see <http://www.iab.net/media/file/ven-principles-07-01-09.pdf>) and has moved to implement those principles.

**Conclusion**

Gray is at the forefront of broadcasters that are using new media and technologies to provide the public with news and information content. These efforts currently rely upon, and will continue to rely upon, revenue generated from online advertisements. Gray certainly understands and applauds the FTC's interest in protecting consumers' privacy. Before taking any steps with respect to online advertising, however, the Commission should account for the consumer benefits that are supported by such advertising and support flexible industry self-regulation. In addition, any FTC actions should nurture entry into, and innovation within, the Internet space. In light of the foregoing, Gray respectfully urges the FTC to exercise caution when addressing online advertising and the developing the privacy framework.

Respectfully submitted,

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