

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

WILLIAM L. KOVACS
SENIOR VICE PRESIDENT
ENVIRONMENT, TECHNOLOGY &
REGULATORY AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062
(202) 463-5457

October 31, 2014

VIA ELECTRONIC FILING

Mr. Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Room H-113 (Annex X)
Washington, DC 20580

Re: *Big Data: A Tool for Inclusion or Exclusion? Workshop*, Project No. P145406

Dear Mr. Clark:

The U.S. Chamber of Commerce (“Chamber”)¹ is pleased to submit these comments to the Federal Trade Commission (“Commission”) in response to the agency’s request for comments on issues raised at its September 15, 2014, workshop on “Big Data: A Tool for Inclusion or Exclusion?”² The workshop focused on “the use of ‘big data’ and its impact on American consumers, including low income and underserved consumers.”³ These comments supplement the Chamber’s previous comments in this proceeding that were filed prior to the workshop.⁴

The laws that prohibit unfair discrimination for credit, employment, housing and education are not subverted or rendered void by a person or an organization using its own big data or the big data of a third party to unfairly discriminate against a protected class. These anti-discrimination laws are still in effect and all covered entities are still required to follow them. The use of big data does not change any of this. Therefore, given the benefits of big data to

¹ The U.S. Chamber of Commerce is the world’s largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America’s free enterprise system.

² Federal Trade Commission, *Big Data: A Tool for Inclusion or Exclusion?* (last accessed Oct. 31, 2014), available at <http://www.ftc.gov/news-events/events-calendar/2014/09/big-data-tool-inclusion-or-exclusion>. (“*Big Data: A Tool for Inclusion or Exclusion? Workshop Description*”).

³ *Id.*

⁴ Comments of the U.S. Chamber of Commerce (filed Aug. 15, 2014), *FTC to Examine Effects of Big Data on Low Income and Underserved Consumers at September Workshop*, Project No. P145406, available at http://www.ftc.gov/system/files/documents/public_comments/2014/08/00021-92389.pdf. See also, *U.S. Chamber Comment Letter to the White House Office of Science and Technology Regarding its Big Data Study* (filed Mar. 31, 2014), available at <https://www.uschamber.com/comment/comment-letter-big-data-study>; and *U.S. Chamber Comments to NTIA on Big Data and Consumer Privacy in the Internet Economy* (filed Aug. 5, 2014), available at <https://www.uschamber.com/comment/comments-ntia-big-data-and-consumer-privacy-internet-economy>.

consumers and the U.S. economy, the Commission should restrain from acting further in this area unless there are specific, identified harms cannot be addressed adequately by the myriad of means available today to prevent unfair discrimination.

I. Data is a Key Driver of U.S. Innovation and Economic Growth

As stated in a recent report released by the U.S. Chamber of Commerce Foundation, data “is a force for good. It is fodder for research and a catalyst for innovation. It is the bedrock of informed decision-making and better business and the key to unlocking more efficient, effective government and other services. It unleashes economic growth, competition, profitability, and other breakthrough discoveries.”⁵

Data can help create new goods and services, optimize production processes, improve marketing and customer service, help improve product development, enhance organizational management, increase access to credit, detect and prevent fraud as well as authenticating individual identities, and facilitate faster research and development.⁶ Data-driven decision-making enables companies to achieve output and productivity that is 5% to 6% higher than what would be anticipated given their other uses of and investments in information technology, according to a study led by Erik Brynjoffson at the Massachusetts Institute of Technology.⁷

II. Data Can Empower Underserved and Low Income Populations

Technology and data can increase safety, opportunity, and convenience—especially for underserved and low income populations.⁸ In particular, data can be used to empower these populations.⁹

Policymakers should focus on combatting the “data divide”—the social and economic inequities that could occur from the absence of collection or data about certain communities.¹⁰ “[I]ndividuals who come from data rich environments may find that they have a comparative advantage over those who grow up in data poverty.”¹¹ These advantages may result in better

⁵ U.S. Chamber of Commerce Foundation, *The Future of Data-Driven Innovation*, Oct. 7, 2014, available at <http://www.uschamberfoundation.org/sites/default/files/The%20Future%20of%20Data-Driven%20Innovation.pdf>. (“USCCF Report”).

⁶ *Id.* at 5.

⁷ *Id.* at 11 (citing Erik Brynjolfsson, Lorin M. Hitt, and Heekyung Hellen Kim, *Strength in Numbers: How Does Data-Driven Decisionmaking Affect Firm Performance?*, Apr. 22, 2011).

⁸ For example, it is worth noting that according to a recent Pew Research Internet Project survey, African Americans and whites have identical rates of smartphone ownership. Aaron Smith, *African Americans and Technology Use: A Demographic Portrait*, Pew Research Internet Project, Jan. 6, 2014, available at <http://www.pewinternet.org/2014/01/06/african-americans-and-technology-use>.

⁹ See, for example, Future of Privacy Forum and Anti-Defamation League, *Big Data: A Tool for Fighting Discrimination and Empowering Groups*, Sept. 2014, available at <http://www.futureofprivacy.org/wp-content/uploads/Big-Data-A-Tool-for-Fighting-Discrimination-and-Empowering-Groups-Report1.pdf>.

¹⁰ Daniel Castro, *The Rise of Data Poverty in America* at 2, Sept. 10, 2014, available at <http://www2.datainnovation.org/2014-data-poverty.pdf>.

¹¹ *Id.*

health care outcomes, increased access to financial services, and improved government services.¹² However, groups routinely excluded from data sets may fail to realize the full benefits that data can bring.¹³ Therefore, policymakers must ensure that “‘data deserts’—areas of the country characterized by absence of access to high-quality data” do not arise.¹⁴

Policymakers should continue to support government and private-sector data collection programs aimed at unrepresented and hard-to-reach communities.¹⁵ This is particularly important because current law bars those conducting surveys from using an autodialer to contact wireless phone users. Therefore, calls to only landlines may result in incomplete or inaccurate data as the population as a whole and minorities and the young in particular rely either exclusively or predominantly on wireless telephone service.¹⁶

Better data helps financial institutions understand the risks associated with a particular activity and allows for an improved analysis that can enable services, such as credit, loans and insurance, to those who have been unable to obtain it (including those who have not yet established credit).¹⁷ Using a greater number of data points reduces the chance that any single data point will be overly determinative. As stated in a recent report by the U.S. Chamber Center for Capital Markets Competitiveness:

[D]ata improve[s] the ability of these models to fine-tune a lender’s assessment and pricing of risk. And competitive lending markets encourage an ongoing “champion-challenger” evolution that increases the accuracy of these tools. An excellent example is the recent inclusion of alternative consumer payment data from apartment rentals and utility payments. Incorporating these data into scoring and loan pricing is dramatically expanding credit availability to 30–55 million American consumers who were previously underserved by conventional loan markets. Rather than shutting these individuals out of the market, scoring and risk-based pricing have given lenders the tools and incentives that they need to say yes to loan applications from a far wider cross-section of the population than ever before.¹⁸

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 9-10.

¹⁶ According to the CDC, the number of “wireless-only” households increased to 41.0% during the second half of 2013. An additional 16.1% of U.S. households were “wireless-mostly” (i.e., the household has a landline but receives all or most calls on a wireless phone). Thus, 57.1 percent of U.S. households rely either exclusively or predominantly on wireless telephone service. Stephen J. Blumberg & Julian V. Luke, Div. of Health Interview Statistics, Nat’l Ctr. for Health Statistics, Centers for Disease Control and Prevention, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July–December 2013*, at 1 (July 2014), available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201407.pdf>.

¹⁷ *The Rise of Data Poverty in America* at 8.

¹⁸ U.S. Chamber Center for Capital Markets Competitiveness, *Risk-Based Pricing in Consumer Lending*, Oct. 28, 2014, available at http://www.centerforcapitalmarkets.com/wp-content/uploads/2013/08/CCMC_RiskBasedPricing_FINAL_to_post_10_24_2014.pdf.

III. Focusing on Improper Uses of Big Data and the Harms Created, Rather than Focusing Heavily On Collection, Provides a Balanced and Scalable Approach Toward Big Data

Any federal policies in this area need to be flexible and adaptive to accommodate different uses of data along with rapidly developing technology.¹⁹ Federal policy should recognize that differing risks of harm may arise from different types of data collection and usage. For example, there are fewer risks associated with non-personally identifiable data, especially when anonymized or aggregated, than with data that identifies a user. Similarly, encrypted data also results in reduced risk. In its *Protecting Consumer Privacy in an Era of Rapid Change* report released in March 2012, the Commission articulates certain steps that companies can take to de-identify data so that it would not be considered “reasonably linkable” to a particular consumer or device.²⁰

IV. Conclusion

As the Commission acknowledges in its description of the workshop, “[t]remendous benefits flow from the insights of big data.”²¹ Entities using this data still must comply with all existing laws and regulations as well as relevant self-regulatory practices. Therefore, as the Commission examines big data, the Chamber urges the agency to restrain from acting in this area unless there are specific, identified harms that cannot be addressed adequately by the current legal framework. Thank you for the opportunity to provide these supplemental comments on this important matter.

Sincerely,

William L. Kovacs

¹⁹ It is worth noting that thirteen trade associations, including the Chamber, filed joint comments with the Department of Commerce’s National Institute of Standards and Technology (NIST) urging the agency to focus its Privacy Engineering initiative on cataloguing, in a policy-neutral manner, how privacy engineers accomplish various privacy-by-design or information management processes they are tasked with developing. Joint Trade Association Comments, *NIST Privacy Engineering Objectives and Risk Model*, Oct. 10, 2014, available at http://csrc.nist.gov/projects/privacy_engineering/comments_recd_10_2014/20141010_joint_trade_assoc.pdf.

²⁰ FTC, *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers at 20-22*, Mar. 2012, available at <http://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-report-protecting-consumer-privacy-era-rapid-change-recommendations/120326privacyreport.pdf>.

²¹ *Big Data: A Tool for Inclusion or Exclusion? Workshop Description*.