

DEPARTMENT OF COMMERCE
NATIONAL TELECOMMUNICATIONS AND INFORMATION
ADMINISTRATION

DEVELOPING THE
ADMINISTRATION'S APPROACH TO
CONSUMER PRIVACY

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Docket No. 180821780-8780-01



COMMENTS OF MISSION:DATA COALITION

I. INTRODUCTION

Pursuant to the National Telecommunications and Information Administration's ("NTIA") Request for Comment ("RFC") dated September 26, 2018 as published in the Federal Register, the Mission:data Coalition ("Mission:data")¹ is pleased to provide these comments concerning the federal role in ensuring consumer privacy.

Mission:data is a national coalition of 35 technology companies delivering energy management innovations to American homes and businesses. We represent a strong, growing and vibrant ecosystem of technology companies – with sales in excess of \$1 billion per year – that have developed many products for a national market. Our membership is a mix of start-ups and mature companies providing everything from smart thermostats to home security systems, smartphone “apps” for energy management and industrial demand response services that help the power grid during times of peak energy demand. Mission:data is focused on empowering consumers with convenient access to their energy usage data (which is held by electricity and natural gas utilities) and the ability to quickly and conveniently share that data with any service

¹ For more information, see www.missiondata.io

provider. Ultimately, our goal is for consumers and businesses to have access to tools that help manage energy costs more economically.

Mission:data applauds the Administration for focusing on the “patchwork” of privacy laws that can, at times, “harm the American economy.” Nowhere is the patchwork more confusing than in the utility sector. Despite considerable federal support over the past decade for utilities and the development of technological standards, we nonetheless have a balkanized landscape. The federal government spent \$8 billion supporting the “smart grid” in the period 2007-2013, of which approximately \$2 billion went to “smart meters,” a technology which was promised to empower consumers by providing real-time, granular information on electricity and natural gas consumption in homes and businesses. To date, there are approximately 80 million smart meters installed across America. However, both the legal requirements and technological methods by which energy data are accessed varies from state to state, and from utility to utility. As a result of these local and regional differences, it is difficult for consumers to receive the benefits of software technologies that could, in a more unified market, easily scale up to serve tens of millions of users.

Mission:data is the primary advocate nationwide for Green Button Connect (“GBC”), a technological standard for sharing energy information developed by NIST, the Department of Energy and industry stakeholders over many years. GBC has been adopted by five (5) state public utility commissions for approximately 36.2 million meters nationwide and has proven remarkably valuable to consumers; GBC is extremely versatile and is being used for commercial real estate managers to efficiently track their portfolio’s utility costs, and for consumers who, by merely playing a game on their smartphone, can earn money by saving energy when wholesale electricity markets experience high prices. (Several such smartphone apps are only available in certain states and utility territories due, in part, to balkanization.) Our entrepreneurs are remarkably creative, but much more is needed to bring consistency to what might be called the U.S. “energy information economy.” Mission:data hopes the Administration will thoughtfully consider our recommendations, if only to help consumers fully reap the rewards of the \$2 billion in federal money already spent on enabling technology, i.e. smart meters. We provide our recommendations below.

II. **FEDERAL LEADERSHIP IS NEEDED ON DEFINING INFORMED CONSENT IN DIGITAL CONTEXTS**

As internet-based technologies proliferate, one of the key questions facing consumer advocates and others is: How can we make sure consumers know what they're agreeing to online?

Unfortunately, the two approaches taken to date have not resulted in optimal guidelines to obtain informed consent to use consumers' data. The first approach, as noted in the RFC, is to provide "long, legal, regulator-focused privacy policies," which consumers struggle to read. When lawmakers or regulators require privacy policies to follow certain principles – "transparency," "control," etc., those policies may be well-intentioned, but they are far too vague to be immediately put into practice. Only court challenges – led by large corporations or the wealthy, who can afford such expenses – yield the clarity that most firms want and that, arguably, regulators should have provided in the first place. It's safe to say that, in a world in which technology changes very quickly, litigating abstract principles of digital consent in the courts is not the optimal pathway to achieving the laudable goal of more informed consumers.

The second approach taken is for regulators to draw strict boundary lines between what they view as legitimate vs. illegitimate activities with consumers' data, providing a backstop or "minimum performance criteria" for any service that uses customer data. The risk here is that regulators might be too prescriptive, limiting common-sense options for consumers. State utility regulators have, for instance, prohibited the sale of energy data without customer consent.² Although well-intentioned, it has effectively banned intermediaries, or "aggregators," from operating in some states. Aggregators are firms that provide energy data, with customer consent, to smaller organizations for a fee. A perfectly legitimate use of aggregators is a mom-and-pop rooftop solar company that wishes to use an online service to access a prospective customer's

² For instance, the Illinois Commerce Commission has required recipients of energy data from regulated utilities to agree to never sell energy data to another entity.

energy usage history, saving the rooftop solar company the hassle and expense of building information technology systems to interact directly with a utility. Unfortunately, entrepreneurs in some states are stifled by overly-prescriptive regulations of this type. Mission:data supports the RFC’s comment that “there should be a distinction between organizations that control personal data and third-party vendors that merely process that personal data on behalf of other organizations” for exactly this reason.

Both of the aforementioned approaches taken to date are band-aids that only partially fix what might be called the “informed consent problem.” If consent were truly informed, then both excessively verbose, legalistic agreements as well as paternalistic governmental requirements would be unnecessary. While universal informed consent may be an elusive, long-term goal, Mission:data believes the federal government has a leadership role to play in defining guidelines and best practices of informed consent in various digital contexts. Answering questions such as the following, with examples, would be tremendously useful to the industry: How should consent be succinctly obtained on screens of different sizes (desktop vs. mobile)? How should iconography be used to convey what data are being accessed? Even if such federally-drafted guidelines are not legally binding in certain sectors, they would provide much-needed clarity to guide firms in the right direction.

III. **“INTEROPERABILITY” SHOULD BE ENHANCED WITH EASE-OF-USE REQUIREMENTS**

While Mission:data is pleased that “interoperability” is a key consideration of this Administration, it is important to understand that interoperability is a necessary but insufficient condition of competitive digital markets. Technically speaking, “interoperability” between services might be possible, but if the average user is not able to execute a transfer of information in a reasonable way, then the ultimate objective is not reached. One example from the utility industry is the extreme difficulty many customers have filling out required forms (often on paper) required to authorize the sharing of information with a third party entity. Utility monopolies can claim that customers have the right to share their data with anyone they wish, but if *exercising* that right is difficult relative to modern standards – due to clumsy forms,

poorly-designed websites, etc. – it might as well not exist. Therefore, we recommend coupling the principle of *ease-of-use* with interoperability in order to ensure that the desired outcome – data portability – can actually be obtained.

IV. **C(1): THE EXECUTIVE BRANCH’S OPPORTUNITIES TO SUPPORT ENERGY ENTREPRENEURSHIP**

(1) Through procurement, the General Services Administration (“GSA”) could promote Green Button Connect wherever it owns or leases property. Historically, GSA has taken a leadership role in energy efficiency by adopting innovative new building technologies to save taxpayers money. That leadership role should be extended by having GSA ask the utilities that serve government facilities to provide detailed energy usage information to the government via GBC. By pushing utilities to support GBC, GSA would both contribute to catalyzing opportunities for entrepreneurs who would also take advantage of GBC as well as reduce costs to taxpayers by more efficiently managing federal facilities.

(2) The Administration should make a very modest ongoing investment in the National Renewable Energy Laboratory’s (“NREL”) Utility Rate Database (“URDB”), a uniform, web-based repository of machine-readable electric utility rates. With over 3,000 retail electric utilities in the U.S., each with dozens of different rate structures or “tariffs,” it is virtually impossible for entrepreneurs to catalogue, code into software, and keep up to date all of these rates. Entrepreneurs making energy management tools can provide consumers with accurate estimates of the dollar savings likely to result from recommended actions, such as investing in energy-efficient home improvements, new appliances or smart thermostats – but only if the thousands of rate structures across all zip codes are easily accessible via software. Fortunately, NREL has already developed the Utility Rate Database (see www.openei.org) with over 40,000 rate structures, so the hard work of creating such a database is mostly complete. But the URDB needs to be kept up to date, with small changes needed to accommodate increasingly complex electric rate structures seen nationwide. The Administration could achieve this goal with a small,

