



Promoting Convenience, Choice, and Commerce on the Net

The NetChoice Coalition
1401 K St NW, Suite 502
Washington, DC 20005
202.420.7482
www.netchoice.org

July 8, 2011

US Federal Communications Commission
In The Matter Of FCC Announces Agenda And Panelists For Forum On
Helping Consumers Harness The Potential Of Location-Based Services
WT Docket No. 11-84

***NetChoice Reply Comments on FCC Announces Agenda And Panelists For Forum On
Helping Consumers Harness The Potential Of Location-Based Services***

NetChoice welcomes this opportunity to comment on the nexus between privacy policy and innovation.

NetChoice is a coalition of trade associations and e-commerce companies, plus thousands of small businesses that rely on e-commerce. We work to promote the integrity and availability of the global Internet and are significantly engaged in privacy issues in the states, in Washington, and in international Internet governance organizations.

NetChoice has a long history of breaking down regulatory barriers, beginning with helping travel agents, contact lens suppliers, and real estate brokers whose online innovations clashed with legacy regulations that protect traditional business models. Today, NetChoice is concerned that privacy-related regulation that overly restricts collection and use of data could also create barriers to legitimate online commerce.

NetChoice will show that additional regulation from Congress and the FCC is unnecessary since:

- Location based services benefit consumers and businesses;
- Self-regulation is working;
- Consumers already must affirmatively consent to most all geo-location collection;
- The FCC can assist the industry's self-regulation program;
- And consumer education efforts on privacy are already underway.

Benefits of Location Based Services to Consumers and Businesses

Consumers and businesses love the services made possible using location-based technology. Many of the most successful apps or smartphone features have become popular based on knowing exactly where users are at any given time. And that's exactly how customers want it.

Anyone who has owned a smartphone has probably charted their location as a blue dot on their map app. Many also use those same programs to see where the traffic bottlenecks are before starting their evening commute. Some apps use location to help users find the nearest gas station, post office, parking garage, or coffee shop. And location services on smartphones have also changed the way we interact socially, creating a market for check-in features to tell your friends and family where you are.

The last decade, has achieved a market valuation approaching \$100 billion. Foursquare, an app which exclusively provides check-in services, has been valued at nearly half a billion dollars.

There is clearly big business opportunity in this marketplace. But location- based services and advertising offer a unique opportunity for Main Street businesses as well. Some apps, like RedLaser, allow users to scan the UPC code of a product and, using the smartphone's location data, find several local retailers nearby where it can be purchased.

Meanwhile, a user searching for a particular product or service on their smartphone can receive an ad from a local store based on their current location data. These ads have the benefit of reaching potential customers at the exact time of a purchasing decision and cost far less than the newspaper circulars or the TV ads that big box stores are able to afford.

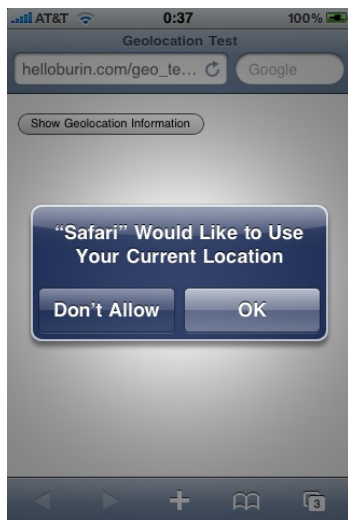
Similarly, local small businesses can also level the playing field with the national chain stores and Internet retailers through shopping apps like Groupon. This app has 38 million North American subscribers who receive daily discounts at local establishments based on their location data.

Self-Regulation is Working

As a threshold matter, we see no evidence for any assertion that data privacy self-regulation related to geo-location information has failed. Consumers have adopted online applications and services at an unprecedented rate when compared to previous new technologies. Last year's holiday season saw a 12% increase in online retail sales, with consumers spending more than \$32 billion online.¹

Perhaps most informative, research shows that advertising and marketing practices are not making consumers more reluctant to go online. And of those consumers who *were* reluctant to shop online, just 0.1% cited concerns over privacy.² These sales and lack of privacy concerns include the use of location-based information to better provide features and services to consumers; services such as notifying a customer of nearby discounts on products.

Consumers Affirmatively Consent to Most Geo-Location Collection



Some of the most common devices collecting geo-location information, such as iPhones, iPads, as well as Windows 7, BlackBerry, and Android mobile devices, require express affirmative consent from the user prior to any initial collection of geo-location information. For example, the Apple iPhone presents users with a prompt before any application may begin collection of geo-location information. And, on the iPhone users can retract any prior consent for the collection of geo-location information.

So platforms holders are allowing *consumers* to control the sharing of geo-location information: giving consumers the power to control the sharing of information. This eliminates the need for any specific governmental regulation since the industry itself is regulating the collection of geo-location information.

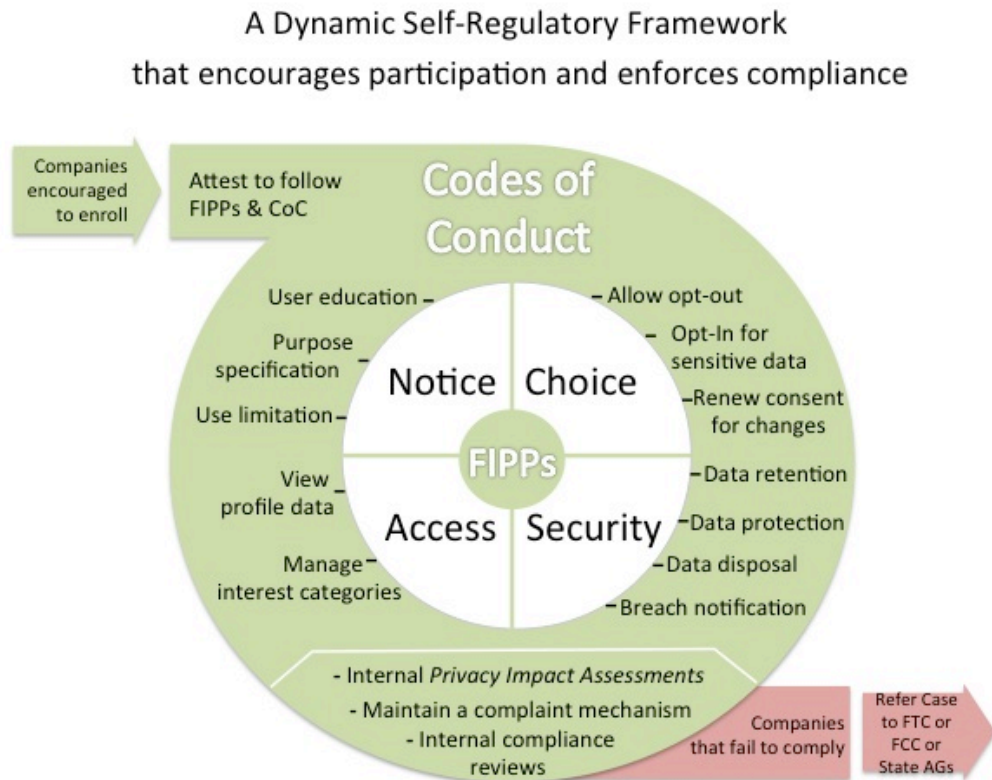
¹ As seen in the comScore report earlier this year.

² 2009 survey by the National Retail Association.

FCC’s Assistance in Industry Self-Regulation Compliance

We do acknowledge that the FCC and FTC can play a role in helping to ensure that companies need enroll in self-regulatory programs and that more enforcement tools are needed to hold companies to their policies.

We offer the following as our vision for an improved industry self-regulatory framework that would dynamically adapt to new technologies and services, encourage participation, and enhance compliance. The diagram below captures the interaction of Fair Information Practice Principles (FIPPs) and Codes of Conduct, while continuing to rely on the FCC and FTC for enforcement:



As envisioned above, FIPPs form the aspirational core that drives business conduct for data privacy. We’ve embraced the four foundational principles advanced by the FTC for the collection and use of user personal information, including geo-location information: notice, choice, access, and security.³

Codes of Conduct are there to enable companies and consumers to implement FIPPs in their online services. The Administration could encourage and guide the development of Codes. With their authority to regulate unfair practices the FCC and FTC⁴ could encourage adoption.

Participating companies would publicly attest to their commitment to implement the Codes and perform periodic reviews to ensure compliance. If a company failed to comply with its adopted Codes, existing laws empower the FCC, FTC, and state Attorneys General to bring enforcement actions.

³ FTC Report, p.6.

⁴ The FCC can use its Title II authority and the FTC can exercise its Section 5 authority to take enforcement actions against unfair acts.

Our framework calls for continued industry self-regulation and relies on government in three ways:

Administration, FCC, and FTC support on the front-end to encourage companies to adopt and attest to the self-regulatory program;

Commerce Department, FCC, and FTC coordination of multi-stakeholder processes to suggest Codes of Conduct for industry to use when implementing principles; and

FCC, FTC, and state Attorneys General enforcement when companies fail to honor the principles and codes they have promised to uphold.

Consumer Education on Privacy Underway

Consumer education remains important to the industry. So businesses already have an effort to educate consumers is already underway, as seen in the *Self-Regulatory Program for Online Behavioral Advertising*. Central to it is the Advertising Option Icon, which allows consumers to understand why they see a given ad, to adjust their interest categories, and even to opt-out of future targeted ads. It's a just-in-time approach that gives the kind of teachable moments that will truly educate and inform the meaning behind the choice. The icon has only recently been activated, and the mechanisms to hold companies accountable will go live this year.



Summary

We recognize the importance of privacy regulations, in particular, for geo-location information. However, private industry already engages in obtaining affirmative consent from users for the collection of geo-location information. And before federal agencies begin taking on new powers and responsibilities, watchdog groups must present stronger evidence than presently exists before regulators ruin an evolving ecosystem of advertising-supported online services that employs over three million Americans and delivers value to nearly all of us.⁵

Again, we thank the Commission for this opportunity to comment and are willing to answer any questions the Commission may have.

Respectfully submitted,

Steve DelBianco, Executive Director

Carl Szabo, Policy Counsel

⁵ Department of Commerce Intern Policy Task Force, *Commercial Data Privacy and Innovation in the Internet Economy: A Dynamic Policy Framework* (Dec. 2010).