



PUBLIC NOTICE

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FCC ENFORCEMENT ADVISORY

OPEN INTERNET PRIVACY STANDARD

ENFORCEMENT BUREAU GUIDANCE: BROADBAND PROVIDERS SHOULD TAKE REASONABLE, GOOD FAITH STEPS TO PROTECT CONSUMER PRIVACY

The Commission's *Open Internet Order* applies the core customer privacy protections of Section 222 of the Communications Act to providers of broadband Internet access service ("BIAS").¹ The Commission has found that absent privacy protections, a broadband provider's use of personal and proprietary information could be at odds with its customers' interests and that if consumers have concerns about the protection of their privacy, their demand for broadband may decrease.² At the same time, the Commission declined to apply its existing telephone-centric rules implementing Section 222 and indicated that in the future it may adopt implementing rules that are tailored to broadband providers.³ As a result, the statutory provisions of Section 222 themselves will apply to broadband providers when the *Open Internet Order* goes into effect.

This Advisory provides guidance to broadband providers about how the Enforcement Bureau intends to enforce Section 222 in connection with BIAS during the time between the effective date of the *Open Internet Order* and any subsequent Commission action providing further guidance and/or adoption of regulations applying Section 222 more specifically to BIAS.

¹ *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, Order, FCC 15-24, 2015 WL 1120110, at *140-41, paras. 463-64 (2015) (*Open Internet Order*).

² *Id.*

³ *Id.* at *140, para. 462. Given the Commission's forbearance from the telephone-centric Section 222 rules, the Commission's prior decisions interpreting and implementing Section 222(c) in the telephone context are not binding as to BIAS.

During this period, the Enforcement Bureau intends to focus on whether broadband providers are taking reasonable, good-faith steps to comply with Section 222, rather than focusing on technical details. By examining whether a broadband provider's acts or practices are reasonable and whether such a provider is acting in good faith to comply with Section 222, the Enforcement Bureau intends that broadband providers should employ effective privacy protections in line with their privacy policies and core tenets of basic privacy protections.

Moreover, the Enforcement Bureau will provide informal as well as formal guidance to broadband providers as they consider how best to comply with Section 222. The Enforcement Bureau will provide more guidance as needed through additional enforcement advisories. In addition, as discussed in the *Open Internet Order*, broadband providers may request advisory opinions to gain further insight as to whether their anticipated future course of conduct comports with the *Open Internet Order*. Although no broadband provider is in any way required to consult with the Enforcement Bureau, the existence of such a request for guidance will tend to show that the broadband provider is acting in good faith.⁴ The application of Section 222 offers an opportunity for broadband customers to increase their demand for broadband by knowing that their privacy is well-protected. In that goal, the Enforcement Bureau believes its interests and those of the great majority of broadband providers are firmly aligned.

Need More Information? Media inquiries should be directed to Neil Grace at 202-418-0506 or neil.grace@fcc.gov. Information about the FCC's Open Internet proceeding is available at <http://www.fcc.gov/openinternet>. For general information on the FCC, you can contact the FCC at 1-888-CALL-FCC (1-888-225-5322) or visit our website at www.fcc.gov.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), (202) 418-0432 (TTY).

Issued by: Chief, Enforcement Bureau

⁴ The decision of a broadband provider not to seek the Enforcement Bureau's views will not be relevant to a consideration of reasonableness or good faith.