

October 10, 2012

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Dear Chairman Genachowski,

We, the undersigned public interest organizations, write to express our strong concerns regarding the consumer privacy risks posed by the Federal Communications Commission's (FCC's) Consumer Broadband Test¹ and Mobile Broadband Test.² These tests, according to the FCC, aim to provide citizens "better information about the quality and availability of their broadband and mobile broadband connections." But the FCC appears to be collecting more personal information than necessary, failing to fully disclose what it is collecting, and providing this information to law enforcement without any due process or judicial scrutiny.

According to the FCC's privacy statement, the Consumer Broadband Test collects each participating consumer's Internet Protocol (IP) address and street address.³ The Mobile Broadband Test collects each participant's mobile IP address, handset location data, unique handset identification number, and latitude/longitude. The two resulting databases may be useful for broadband analysis and testing—but may also become a "honeypot" for unrelated governmental uses.

The privacy statement describes several troubling situations where personal information "may be routinely disclosed." If, for instance, the FCC finds any information to be an "indication of a violation or potential violation of a statute, regulation, rule, or order," the FCC may share such data with federal, state, or local agencies. Thus, consumers who take either broadband test may be unwittingly helping to build databases that other government agencies might use to prosecute criminal offenses and regulatory violations *without any due process or judicial oversight*, or even reporting by the FCC as to how often it shares such information with other agencies.

The FCC also appears to have failed to promptly disclose in its privacy statement what kind of personal data are collected by its Mobile Broadband Test, which has been available for iOS and Android devices since April 2010. In a July 2011 Federal Register notice (required by the Privacy Act of 1974), the FCC disclosed that its app collects user locations (latitude and longitude) and unique handset identification numbers—and that the FCC's software partners may release user location information to the public.⁴ Yet the FCC said nothing about collecting such information when it published its first Privacy Act notice regarding its broadband measurement in December 2009,⁵ nor when the agency revised this filing in April 2010.⁶ Even

¹ FCC Consumer Broadband Test, <http://www.broadband.gov/qualitytest/>.

² FCC Mobile Broadband Test, <https://play.google.com/store/apps/details?id=com.ookla.fccbroadband&hl=en>.

³ Consumer Broadband Test (Beta), and Dead Zone Report Privacy Statement, Federal Communications Commission, <http://www.broadband.gov/broadband-quality-test-privacy-statement.html>.

⁴ 76 F.R. 41497-500 (2011), <http://www.gpo.gov/fdsys/pkg/FR-2011-07-14/html/2011-17775.htm>.

⁵ 74 F.R. 69098-100 (2009), <http://www.gpo.gov/fdsys/granule/FR-2009-12-30/E9-31009/content-detail.html>.

the FCC's May 2010 Privacy Threshold Analysis⁷ regarding the Consumer Broadband Test is silent on the collection of user location information. Until its July 2011 Federal Register filing, the FCC's sole mention that its Mobile Broadband Test collects user location data appeared at the bottom of the "About" tab of the app (assuming this notice was actually available on the "About" tab when the application launched).

The FCC has also contracted with two private entities, Ookla and M-Lab, to assist it in conducting the broadband tests. Both entities collect and store consumers' broadband performance information and IP addresses, which they may release to the public for any reason.⁸

Our organizations may differ regarding the proper role of government in policing and regulating the collection and use of personal information by private companies. But we all agree that governmental misuse of personal information poses a unique threat—and that government agencies thus bear a unique burden of justifying, disclosing and minimizing their collection and use of personal data. We urge the FCC to carefully evaluate the privacy implications of its broadband testing program and implement measures to enhance privacy, including:

- Disclosing personal information to other government agencies for purposes unrelated to broadband testing only when doing so is required by law;
- Minimizing its collection and retention of potentially sensitive personal information (*e.g.*, street addresses and handset identification numbers);
- Where the collection of such information is justified, properly de-identifying the data to preserve its value while protecting the identities of individuals and their locations;
- Regularly disclosing how personal information, including street addresses, is retained, used, and shared with other governmental agencies; and
- Imposing the same limits on the public disclosure of IP addresses by the FCC's contractors, M-Lab and Ookla, and its other software partners.

Pending a privacy evaluation of the Consumer Broadband Test and the Mobile Broadband Test, we urge the FCC to post a prominent notice warning users how their personal information may be used, and ensure this notice appears before the tests are administered. Whatever the privacy risks here, the precedent set by the FCC with these programs will help shape how the FCC and other agencies handle sensitive information in the future.

Sincerely,

Competitive Enterprise Institute

TechFreedom

Campaign for Liberty

The Rutherford Institute

OpenTheGovernment.org

Communications Liberty and Innovation Project

Center for Media and Democracy

Institute for Liberty

Center for Financial Privacy and Human Rights

Liberty Coalition

⁶ 75 F.R. 17738-741 (2010), <http://www.gpo.gov/fdsys/granule/FR-2010-04-07/2010-7988/content-detail.html>.

⁷ FCC Privacy Threshold Analysis, Broadband Dead Zone Report and Consumer Broadband Test (May 2010), http://transition.fcc.gov/omd/privacyact/System_of_records/pta-broadband-dead-zone-report.pdf.

⁸ Consumer Broadband Test (Beta), and Dead Zone Report Privacy Statement, *supra* note 3.