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## FCC RELEASES NEW BROADBAND PRIVACY RULES

The FCC today voted, in a 3-2 decision, to approve new privacy rules that apply to broadband and voice service providers. The new rules apply only to broadband and voice service providers, and do not apply to so-called “edge providers” such as Google, Facebook, Twitter, and other social media providers. The new rules are generally co-extensive with the jurisdiction the FCC has over broadband internet access services under the 2015 *Open Internet Order*.

The new rules establish a new framework of customer consent “calibrated to the sensitivity of the information” possessed by a broadband service provider:

- **Opt-in** – Broadband service providers are required to obtain the customer’s permission before it can “use and share” the following types of “sensitive information”:

• Precise geo-location	• Financial information
• Health information	• Children’s information
• Social security numbers	• Web browsing history
• App usage history	• Content of communications

- **Opt-out** – Broadband services are allowed to “use and share” non-sensitive information unless a consumer opts-out. Anything other than “sensitive information” as described above will generally be considered non-sensitive information.
- **Exceptions** – Customer consent is inferred with respect to the broadband provider’s “use and sharing” of data for the purpose of providing broadband service. For example, a broadband service provider can use sensitive customer information for the purpose of billing a customer for their broadband service, or for marketing upgrades to a customer’s existing level of broadband service.

The new rules also require broadband service providers to provide “clear, conspicuous, and persistent notices” about data they collect, how it can be used, with whom it may be shared, and how customers can modify their privacy preferences (opting in and opting out). The new rules also require broadband service providers to have reasonable cybersecurity practices. The Order (the actual text of which has not yet been released) will not provide a cyber-security “checklist” for broadband service providers. However, it will provide guidelines regarding:

- Implementing current industry best practices, including guidance on how to properly manage security risks;
- Provide appropriate accountability and oversight of security practices;
- Implementation of “robust” customer authentication tools;

- Proper disposal of data consistent with the best practices of the Federal Trade Commission and President Obama’s “Consumer Privacy Bill of Rights.”

Finally, the new rules include the following new data breach notification requirements:

- Notify customers of a data breach within 30 days after knowledge of a breach;
- Notify FCC, FBI, and U.S. Secret Service of breaches affecting 5,000 or more customers no later than 7 days after reasonable determination of a breach;
- Notify FCC contemporaneously with notice to customers in breaches affecting less than 5,000 customers.

The new rules take effect on the following schedule (all time frames begin on the date the FCC’s Broadband Privacy Order is published in the *Federal Register*:

- Data security requirements - 90 days.
- Data breach notification requirements - 6 months
- Privacy notices and offering of Opt-in choice options – 12 months for large broadband service providers; 24 months for small broadband service providers.

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