



Tom Gerke
President and Chief Executive
Officer

July 23, 2008

The Honorable John D. Dingell, Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, DC 20515

The Honorable Edward J. Markey, Chairman
Committee on Telecommunications and the Internet
316 Ford House Office Building
Washington, DC 20515

Dear Chairman Dingell, Ranking Member Barton and Chairman Markey:

I am writing to provide information in answer to your July 14 letter to Embarq regarding our consumer preference marketing test. The answers below pertain to our brief test which ended earlier this year. Embarq has no plans for more tests or for general deployment of this technology, until such time as privacy concerns have been addressed.

1. In what community was the test conducted and how was that community chosen?

The test was conducted in a single data POP (point of presence) in Gardner, Kansas. The site was chosen because it was our smallest data POP and because of its proximity to qualified technical and product development staff working at or near that facility.

2. How many subscribers were involved in the test?

During the test period, the data POP served approximately 26,000 high-speed Internet subscribers.

- 3. How did Embarq notify subscribers in the affected community of the test? Please provide a copy of the notification. If Embarq did not specifically or directly notify affected subscribers, please explain why this was not done.**

Two weeks before the test began, Embarq posted a notice in the Privacy Policy that appeared on the Embarq website of the possible use of online customer preference advertising, with clear directions on how to opt out under an 18-point typeface header reading "USE OF PERSONAL INFORMATION." The notice read as follows:

Preference Advertising. Embarq may use information such as the websites you visit or online searches that you conduct to deliver or facilitate the delivery of targeted advertisements. The delivery of these advertisements will be based on anonymous surfing behavior and will not include users' names, email addresses, telephone numbers, or any other Personally Identifiable Information.

You may choose to opt out of this preference advertising service. By opting out, you will continue to receive advertisements as normal, but these advertisements will be less relevant and less useful to you. If you would like to opt out, click here. (embarq.com/adsoptions)

In choosing this means of notice, Embarq followed the prevailing industry practices of the most similar business model, that of online advertising networks, which also collect anonymous information across multiple unrelated websites and use it to serve personalized display advertisements, using this same mechanism for providing notice and choice.

Embarq's approach to notice and choice for the brief test also was consistent with the framework outlined by the Federal Trade Commission ("FTC"), first in its 1998 Privacy Principles (encompassing Notice, Choice, Access, and Security)¹ and then in its subsequently issued 2007 Proposed Self-Regulatory Principles for Online Behavioral Advertising ("FTC Proposed Principles").²

- 4. Did Embarq conduct a legal analysis regarding the applicability of consumer privacy laws on the service used in the test? If so, please explain what that analysis concluded.**

Yes, Embarq conducted a legal analysis regarding the applicability of consumer privacy laws on the service used in the test. It always has been Embarq's belief that its conduct of the test was lawful and otherwise permissible.

¹ See Privacy Online, A Report to Congress, FTC (June 1998).

² FTC Report, *Online Behavioral Advertising: Moving the Discussion Forward to Possible Self-Regulatory Principles*, at 1 (Dec. 2007)

5. Please explain why Embarq chose to conduct the test allowing consumers who objected to “opt out” rather than first asking customers to “opt in.”

In determining the means of consumer choice for its test, Embarq benchmarked to industry practices of the most similar business model for collection of anonymous, non-sensitive data (as explained in our response to question 3), and the notice-and-choice standards outlined in the 1998 FTC principles. Embarq also closely monitored the development of the FTC Proposed Principles.

6. How did Embarq notify subscribers in the affected community of their opportunity to “opt out” of the test? If Embarq did not specifically or directly notify affected subscribers of the opportunity to “opt out,” please explain why this was not done.

The privacy notice referenced in our answer to question 3 also notified subscribers of their option to “opt out” and provided a one-click mechanism to do so. In its notification of the opt-out opportunity, Embarq benchmarked to industry practices of the most similar business model for collection of anonymous, non-sensitive data (as explained in response to question 3).

7. How many subscribers in the affected community opted out of participating in the test?

Based on information provided to us by our test technology vendor, 15 subscribers opted out.

8. Did Embarq conduct a legal analysis regarding the adequacy of the “opt-out” notice and mechanism employed to allow consumers to effectuate this choice? If so, please explain what that analysis concluded.

Yes, Embarq conducted a legal analysis regarding the adequacy of the “opt-out” notice and mechanism. It always has been Embarq's belief that its “opt-out” notice and mechanism were adequate.

9. What is the status of the consumer data collected during this test? Has it been destroyed?

No raw or identifiable customer data was collected or utilized during the test. The only data during the test consisted of codes representing categories of interest that were derived anonymously via software. Each interest category had a short pre-programmed lifespan, after which it was automatically deleted. Once the test was complete, all such data that had not otherwise expired was destroyed.

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In summary, the brief test was concluded earlier this year, no customer data continues to exist, and we have no plans for more tests or for general deployment of this technology, until such time as privacy concerns have been addressed.

Thank you for the opportunity to present this information to the Committee.

Sincerely,



Tom Gerke
President and Chief Executive Officer

Cc: Honorable Cliff Stearns, Ranking Member