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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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July 14, 2008

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Mr. Tom Gerke
Chief Executive Officer
Embarq
5454 W. 110th Street
Overland Park, KS 66211

Dear Mr. Gerke:

We are writing with respect to a recent test conducted by Embarq to tailor Internet advertising to the web-browsing patterns of individual Embarq subscribers. We are interested in the nature of this test as well as the impact that this test, and the underlying technology it employed, could have on consumer privacy and other issues.

We understand that Embarq conducted a test earlier this year in a select community in conjunction with NebuAd to create consumer profiles for the purpose of serving ads to consumers based upon their search and surfing habits. As you may know, questions have been raised regarding the applicability of privacy protections contained in the Communications Act of 1934, the Cable Act of 1984, the Electronic Communications Privacy Act, and other statutes, to such practices.

In particular, we are concerned that Embarq may not have directly notified the subscribers involved in the test that their Web use was being analyzed and profiled. We therefore request that you answer the following questions in order for us to better understand the nature of the test conducted, its impact on consumers, and the broader public policy implications of this technology.

1. In what community was the test conducted and how was that community chosen?
2. How many subscribers were involved in the test?
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.

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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.
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."
6. How did Embarq notify subscribers in the effected community of their opportunity to "opt-out" of the test? If Embarq did not specifically or directly notify effected subscribers of the opportunity to "opt-out," please explain why this was not done.
7. How many subscribers in the effected community opted out of participating in the test?
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.
9. What is the status of the consumer data collected during this test? Has it been destroyed?

Thank you in advance for your attention to this matter. We respectfully request a response by Monday, July 21, 2008.

Sincerely,



John D. Dingell
Chairman



Joe Barton
Ranking Member



Edward J. Markey
Chairman
Subcommittee on Telecommunications and the Internet

cc: The Honorable Cliff Stearns, Ranking Member
Subcommittee on Telecommunications and the Internet