CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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March 21, 2014

VIA ELECTRONIC FILING

Mr. Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Room H-113 (Annex J)
Washington, DC 20580

Re: *Spring Privacy Series: Mobile Device Tracking, Project No. P145401*

Dear Mr. Clark:

The U.S. Chamber of Commerce ("Chamber")[1] is pleased to submit these comments to the Federal Trade Commission ("Commission") in response to the agency's request for comments on issues raised during the Commission's February 19, 2014, seminar on "Mobile Device Tracking."[2] Given the benefits of this technology to consumers and businesses, the Chamber urges the Commission to exercise restraint as it examines this issue.

I. Background on Mobile Device Tracking

Some retailers have chosen to or are considering whether to deploy technology in their store that can use the Wi-Fi, Bluetooth, or cellular signals emitted from their customers' mobile devices to track the movements of their customers while in the store or shopping center. Aggregating this data helps retailers improve their business operations and provide improved customer service. According to press reports, Chairwoman Ramirez recently acknowledged that "retailers tend to look at this data in a manner that is aggregated….[,s]o they don't know that device X, Y, or Z moved along this path"[3] and that the Commission would likely not have a problem with data used in this "deidentified way."[4]

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[1] The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system.

[2] Federal Trade Commission, *Spring Privacy Series: Mobile Device Tracking*, Feb. 19, 2014, *available at* http://www.ftc.gov/news-events/events-calendar/2014/02/spring-privacy-series-mobile-device-tracking.

[3] "FTC Increasing Focus on Deidentification, In-Store Tracking, Ramirez Says," *Communications Daily*, Mar. 7, 2014.

[4] *Id.*

    II.   **By Enabling Improved Customer Service and Providing Insights into Store Operations, Mobile Device Tracking Helps Brick-and-Mortar Retailers Compete with E-Commerce and M-Commerce Rivals**

While online sales accounted for just 6.0% of all retail sales during the fourth quarter of 2013,[5] online sales during the holiday season increased by more than double the rate of brick-and-mortar sales, according to ShopperTrak.[6] Moreover, customer holiday traffic to brick-and-mortar retail stores was down by half in 2013 compared to three years earlier.[7] Therefore, retailers' use of mobile device tracking technologies is likely to have a cognizable and measurable economic impact on businesses and the economy. The Chamber urges the Commission to focus on these types of economic impacts as it examines this technology.

Mobile device tracking helps retailers learn more about customer patterns including determining customer flow through a store, how much time customers spend in the store and in particular areas, the impact of sales and other promotions on drawing people into the store, and wait times for checkout. In a mall, this data could be used to determine the popularity of stores, customer traffic flow, insights into how customers shop at the mall and correlations between customer visits to different stores within the mall, and staffing of security.

To help compete with their online rivals where shoppers can avoid lines and crowded malls, brick-and-mortar retailers are trying to replicate the ease of online shopping. Specifically, a top priority is reducing wait times.[8] If lines are too long, customers become annoyed or, worse, abandon the items that they intended to purchase and leave the store.[9] A third of customers have abandoned the checkout line when forced to wait for more than five minutes, nearly 50% of all customers will actively avoid the retailer or brand in the future if the wait in line was longer than five minutes, and customers will become frustrated after 2.5 minutes of no apparent progress in a line, according to retail-analytics firm Brickstream.[10]

Mobile tracking technology can help retailers reduce wait times by providing insights into how to position staff throughout the store. Using this technology to create heat maps, for example, does not require the collection of any personally identifiable information from consumers but allows companies to make shopping a better, more efficient experience for their

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[5] "Quarterly Retailer E-Commerce Sales: 4th Quarter 2013, *U.S. Census Bureau News*, Feb. 18, 2014, *available at* https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf.

[6] Shelly Banjo and Drew FitzGerald, "Stores Confront New World of Reduced Shopper Traffic," *The Wall Street Journal*, Jan. 16, 2013, *available at* http://online.wsj.com/news/articles/SB10001424052702304419104579325100372435802.

[7] *Id.*

[8] *See,* Julie Jargon, "Retailers Wage War Against Long Lines," *The Wall Street Journal*, May 1, 2013, *available at* http://online.wsj.com/news/articles/SB10001424127887323798104578453293807869744.

[9] Steve Jeffery, "How Data-Driven Technologies can Help Brick and Mortar Retailers Step Up their Holiday Game," *RetailMerchandiser* Blog, Oct. 1, 2013, *available at* http://blog.retail-merchandiser.com/?p=365.

[10] *Brickstream QueueIQ: Queue Management*, Brickstream.com (last accessed Mar. 19, 2014), *available at* http://brickstream.com/wp-content/uploads/2014/01/Brickstream-QueueIQ-Overview-12-30-131.pdf.

customers by using that data to shift personnel around the store to shorten checkout lines or provide additional sales assistance in a particular part of the store.[11]

Similarly, by providing accurate information on customer traffic flow, this technology can help retailers avoid understaffing or overstaffing. Understaffing can result in lost sales because shoppers who want "help finding a size or are interested in asking a few questions about a product may simply leave when a salesperson is unavailable" and overstaffing misallocates financial resources and personnel.[12]

Thus, the technology's impact on competition should be a critical factor in the Commission's examination of mobile device tracking. The Commission should strive not to place any regulations or guidelines in this space that would harm the consumer welfare (e.g., lower prices and better services) derived from this technology and its effect on competition.

III. Businesses Depend More than Ever on Having Beneficial Trusted Relationships with Their Customers

In this tough economy, successful companies work to ensure that their business practices are deemed trustworthy by their customers. The Chamber agrees with the comments of iInside CEO Jim Riesenbach, when he said on the panel at the FTC seminar that "[at] the end of the day, market forces prevail, and those retailers and businesses that violate the trust of their consumers will be punished by the marketplace more than anything else."[13] Therefore, the Commission should not act unless it sees actual evidence of consumer harms. The Chamber notes that there was a dearth of any mention of such harms at the seminar; most of the concerns expressed were highly speculative and esoteric.

IV. Conclusion

As the Commission studies the issue of mobile device tracking, the Chamber strongly urges you to exercise restraint given the benefits of this technology and that its implementation will be guided by consumer reaction to it. Thus, we also would encourage the Bureau of Consumer Protection's Division of Privacy and Identity Protection to work closely with the Bureau of Economics and the Bureau of Competition on this examination. Thank you for the opportunity to provide comments on this matter.

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[11] Moreover, the use of heats maps, in general, is a proven method of reducing wait times. For example, pairing infrared camera that can detect body heat with in-house software that calculates the number of check-out lanes that should be open, Kroger reduced wait times from 4 minutes to 26 seconds. Julie Jargon, "Retailers Wage War Against Long Lines."

[12] Jeffery, "How Data-Driven Technologies can Help Brick and Mortar Retailers Step Up their Holiday Game."

[13] Lindsay Wise, "Stores can gain data on you through your smartphone signals," *Fresno Bee,* Mar. 2, 2014, *available at* http://www.fresnobee.com/2014/03/02/3800663/your-favorite-store-may-be-tracking.html#storylink=cpy.

Sincerely,

William L. Kovacs