

January 6, 2025

Chair Lina M. Khan
Commissioner Rebecca Kelly Slaughter
Commissioner Alvaro Bedoya
Commissioner Andrew Ferguson
Commissioner Melissa Holyoak
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: *Mobilewalla Inc.*, FTC File No. 202-3196

Dear Chair Khan and Commissioners Slaughter, Bedoya, Ferguson, and Holyoak,

By notice published December 6, 2024, the Federal Trade Commission (FTC or Commission) announced a proposed consent order with Mobilewalla Inc. (Mobilewalla), for Mobilewalla's alleged violations of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), prohibiting unfair or deceptive acts or practices.¹ The proposed consent order is the result of the FTC's five-count complaint alleging Mobilewalla engaged in unfair and deceptive data practices and failed to reasonably protect consumers' personal information, including sensitive location information.² The FTC alleged that Mobilewalla unfairly collected and retained sensitive location information and disclosed that information to third parties, largely for targeted advertising purposes. This enforcement action highlights the privacy and security harms related to digital ad auctions, which allow intermediaries to broadcast sensitive personal data, including location information, to multiple parties in a fraction of a second with few or no controls.

The Electronic Privacy Information Center (EPIC) submits this letter to recommend approval of the FTC's proposed order as is and to encourage the Commission to continue instituting robust data security practices through enforcement and regulations. EPIC is a public interest research center in Washington, D.C. established in 1994 to focus public attention on emerging civil liberties issues and to secure the fundamental right to privacy in the digital age for all people through advocacy, research,

¹ See Agreement Containing Consent Order, *In re Mobilewalla Inc.*, File No. 2023196 (2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2023196mobilewallaacco.pdf [hereinafter *Mobilewalla Settlement*]; see also Mobilewalla Complaint, *In re Mobilewalla Inc.*, File No. 202-3196 (2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2023196mobilewallacomplaint.pdf [hereinafter *Mobilewalla Complaint*].

² Mobilewalla Complaint at ¶¶ 2, 5.

and litigation. EPIC routinely files comments in response to proposed FTC consent orders and complaints regarding business practices that violate privacy rights.³

EPIC commends the Commission for its use of Section 5 authority to protect consumers from Mobilewalla’s harmful data practices and hopes the Commission will continue to protect consumers from similar threats in the future.⁴ EPIC supports the Commission’s efforts to safeguard consumers’ personal information against out-of-context secondary uses. So much of online tracking and advertising happens without the consumer’s knowledge or consent. Through real-time bidding, a consumer’s personal information—including sensitive location information—can be shared with third parties to deliver ads. The consumer does not interact directly with these entities and therefore cannot know how such third parties use their personal information. As the Commission has explained, “[t]his data can reveal visits to healthcare facilities, churches, labor unions, military installations, and other sensitive locations.”⁵

The Commission’s complaint contained five counts alleging violations of Section 5(a) of the FTC Act: (1) unfairly selling consumers’ sensitive location information; (2) unfairly targeting consumers based on sensitive characteristics; (3) unfairly collecting consumers’ information from RTB exchanges; (4) unfairly collecting and using consumer location information without consent verification; and (5) unfairly retaining consumer location information.⁶ The Proposed Order⁷ prohibits Mobilewalla from misrepresenting the extent of its location data collection, use, disclosure, and deletion and the extent to which location data is deidentified.⁸ It further prohibits Mobilewalla from collecting or retaining a consumer’s personal information that was accessed via an RTB exchange for

³ See, e.g., Comments of EPIC, in re the Federal Trade Commission’s Proposed Order & Settlement with Marriott and Starwood (Nov. 12, 2024), <https://epic.org/documents/comments-of-epic-in-re-the-federal-trade-commissions-proposed-order-settlement-with-marriott-and-starwood/>; see, e.g., Comments of EPIC, Demand Progress, and EFF in re the Federal Trade Commission’s Proposed Order & Settlement with X-Mode Social, Inc. (Feb. 20, 2024), <https://epic.org/documents/comments-of-epic-demand-progress-and-eff-in-re-the-federal-trade-commissions-proposed-order-settlement-with-x-mode-social-inc/>; EPIC, EPIC Commends FTC for Including Data Minimization & Data Rights in Chegg Settlement (Dec. 12, 2022), <https://epic.org/epic-commends-ftc-for-including-data-minimization-data-rights-in-chegg-settlement/>; EPIC, EPIC Applauds FTC SpyFone Ban, Urges Similar Remedies in Future Privacy Cases (Oct. 8, 2021), <https://epic.org/epic-applauds-ftc-spyfone-ban-urges-similar-remedies-in-future-privacy-cases/>.

⁴ See, e.g., Comments of EPIC, *In re Chegg, Inc.*, FTC File No. 202-3151 (Dec. 12, 2022), <https://epic.org/documents/comments-of-epic-in-re-the-federal-trade-commissions-proposed-order-settlement-with-chegg-inc/> [hereinafter EPIC re Chegg]; Comments of EPIC, *In re Blackbaud, Inc.*, FTC File No. 202-3181 (Mar. 2024), <https://epic.org/documents/comments-of-epic-in-re-the-federal-trade-commissions-proposed-order-settlement-with-blackbaud/> [hereinafter EPIC re Blackbaud]; Comments of EPIC, *In re BetterHelp, Inc.*, FTC File No. 202-3169 (Apr. 12, 2022), <https://epic.org/documents/comments-of-epic-in-re-the-federal-trade-commissions-proposed-order-settlement-with-betterhelp-inc/> [hereinafter EPIC re BetterHelp]; Comments of EPIC, *In re Global Tel*Link*, FTC File No. 212-3012 (Dec. 2023), <https://epic.org/documents/comments-of-epic-in-re-the-federal-trade-commissions-proposed-order-settlement-with-global-tellink/> [hereinafter EPIC re GTL].

⁵ Staff in the Office of Technology & Division of Privacy and Identity Protection, *Unpacking Real Time Bidding through FTC’s case on Mobilewalla* (Dec. 3, 2024), <https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2024/12/unpacking-real-time-bidding-through-ftcs-case-mobilewalla>.

⁶ See Mobilewalla Complaint.

⁷ Decision and Order, *In re Mobilewalla Inc.*, File No. 2023196 (2024), https://www.ftc.gov/system/files/ftc_gov/pdf/2023196mobilewallaorder.pdf [hereinafter Proposed Order].

⁸ Proposed Order at 8.

any other purpose than participating in those auctions on the exchange.⁹ The Proposed Order prohibits Mobilewalla from selling, licensing, transferring, sharing, disclosing, or using sensitive location data in any products or service,¹⁰ and it prohibits Mobilewalla from selling or disclosing location data that may reveal the location of an individual's private residence.¹¹ It also requires that Mobilewalla implement a sensitive location data program.¹²

EPIC applauds the Commission for including these robust protections for consumers' sensitive location information. Real-time bidding is an invasive and largely unregulated part of the commercial surveillance ecosystem. EPIC commends the Commission for highlighting the harms and security threats from RTB and for using its authority to protect consumers' sensitive information from such harmful uses. EPIC particularly commends the Proposed Order's prohibitions relating to unauthorized uses of location information. Data minimization and prohibitions on harmful data uses are essential features of an effective data protection regime. The Commission is right to restrict Mobilewalla's selling, licensing, transferring, sharing, disclosing, and using sensitive location data in any products or services, just as the FTC has imposed data minimization and use restrictions in prior consent decrees.¹³ EPIC has consistently supported these provisions, which lead to stronger privacy protections and better outcomes for consumers and companies alike.¹⁴

EPIC urges the Commission to finalize the proposed Mobilewalla consent order as is. We also encourage the Commission to continue applying its Section 5 authority to prevent the harms of real-time bidding and centering data protection in its enforcement actions and regulations. EPIC hopes that the Commission continues to take action against harmful RTB practices to best protect consumers. If there are any questions, please contact Sara Geoghegan, EPIC Senior Counsel, at geoghegan@epic.org.

Sincerely,

/s/ John Davisson
EPIC Director of Litigation &
Senior Counsel

/s/ Sara Geoghegan
EPIC Senior Counsel

⁹ Proposed Order at 8.

¹⁰ Proposed Order at 8-9.

¹¹ Proposed Order at 10.

¹² Proposed Order at 9-10.

¹³ Decision and Order, *In re CafePress*, File No. 1923209 at 6-8 (Jun. 24, 2022),

https://www.ftc.gov/system/files/ftc_gov/pdf/192%203209%20-%20CafePress%20combined%20package%20without%20signatures.pdf; Decision and Order, *In re Avast Limited*, File No. 2023033 at 9, 11 (Feb. 22, 2024) https://www.ftc.gov/system/files/ftc_gov/pdf/D%26O-Avast.pdf; Decision and Order, *In re X-mode Social Inc.*, File No. 212-3038 at 8-9 (Apr. 11, 2024)

https://www.ftc.gov/system/files/ftc_gov/pdf/X-ModeSocialDecisionandOrder.pdf; Decision and Order, *In re InMarket Media, LLC.*, File No. 202-3088 at 8-10 (May 1, 2024)

https://www.ftc.gov/system/files/ftc_gov/pdf/D%26O-InMarketMediaLLC.pdf.

¹⁴ See generally EPIC re Chegg; EPIC re Blackbaud; EPIC re GTL; EPIC re BetterHelp.