

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Mobilewalla Inc. File No. 2023196

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an agreement containing a consent order from Mobilewalla Inc. (“Mobilewalla”).

The proposed consent order (“Proposed Order”) has been placed on the public record for 30 days for receipt of public comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement, along with the comments received, and will decide whether it should make final the Proposed Order or withdraw from the agreement and take appropriate action.

Respondent Mobilewalla is a Delaware company with its headquarters in Georgia. Founded in 2008, Mobilewalla is a data broker that aggregates consumer information, including location data, to use and sell for its clients’ purposes, including marketing, analytics, and non-commercial uses.

Mobilewalla does not collect information directly from consumers. Instead, Mobilewalla purchases consumers’ location data and other personal information, including consumers’ unhashed and hashed phone numbers from third-party data brokers. Mobilewalla has also collected data through real-time bidding (“RTB”) exchanges and other advertising platforms. When Mobilewalla bid to place an advertisement for its clients through an RTB exchange, Mobilewalla collected and retained the information contained in the bid request, including the device’s mobile advertising identifier (“MAID”), a timestamp, and precise location data, if the consumer had location sharing turned on.

Mobilewalla has sold or licensed raw consumer data, including a device’s latitude and longitude coordinates paired with MAIDs, to its clients. Mobilewalla also analyzes the location data it obtains and, based on the locations and events visited by consumers’ mobile devices, categorizes MAIDs into “audience segments” based on interests or characteristics purportedly revealed by the locations or events. Mobilewalla has offered standard audience segments such as “Music Lovers” but has also created custom audience segments for clients, such as audience segments targeting pregnant women, Hispanic churchgoers, and members of the LGBTQ+ community.

Mobilewalla does not take sufficient steps to verify that consumers consent to its use of their data. Mobilewalla relies on its data suppliers to obtain consumer consent for the collection and use of their data. Mobilewalla’s contracts with its data suppliers include vague provisions requiring the suppliers to comply with applicable law when transferring consumer data to Mobilewalla but does not specifically require consumer consent. In addition, Mobilewalla has minimal procedures to verify whether its suppliers obtained consumer consent. Mobilewalla typically evaluates new data suppliers through a questionnaire and by reviewing the disclosures to consumers from three to five apps from which the supplier collects consumers’ data, even though some suppliers collect consumers’ data from thousands of apps. Mobilewalla does not subsequently or periodically check whether the apps have changed their disclosures.

In addition to failing to take sufficient steps to verify consumer consent, Mobilewalla has retained the collected data indefinitely—far longer than necessary to accomplish the purpose of collection. This unreasonable retention period, combined with Mobilewalla’s comprehensive data collection practices, significantly increases the risk that the sensitive location data would be disclosed or misused, causing harm to consumers.

The Commission’s proposed five-count complaint alleges that Mobilewalla violated Section 5(a) of the FTC Act by (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.

With respect to the first count, the proposed complaint alleges that Mobilewalla sold consumers sensitive location information associated with unique persistent identifiers that reveal consumers’ visits to sensitive locations.

With respect to the second count, the proposed complaint alleges Mobilewalla has categorized consumers into audience segments based on sensitive characteristics, such as medical conditions and religious beliefs, derived from location data. Mobilewalla has sold or transferred these audience segments to third parties for marketing and other purposes, including identifying and targeting consumers who participate in political rallies and protests or attempting to identify and target consumers who participate in union organizing.

With respect to the third count, the proposed complaint alleges that Mobilewalla collected consumers’ personal information, including location data, from RTB exchanges, when Mobilewalla had no winning bid.

With respect to the fourth count, the proposed complaint alleges that Mobilewalla failed to take reasonable steps to verify that consumers consent to Mobilewalla’s use of their location data to track them, develop audience segments, target them with advertising, and use and share their location information with clients for commercial, political, law enforcement, and other purposes. Despite collecting data from thousands of apps, Mobilewalla only checked a very small number of apps to determine whether the app disclosed that the app collected location information and shared it with third parties. Mobilewalla also did not periodically check apps’ disclosures, even though many apps change their disclosures over time.

With respect to the fifth count, the proposed complaint alleges that Mobilewalla retained detailed, sensitive information about consumers, including their location data, indefinitely, which is longer than reasonably necessary to fulfill the purpose for which that information was collected. This practice caused substantial injury in the form of a loss of privacy about the day-to-day movements of millions of consumers, including through the use of retroactive geofences, and an increased risk of disclosure and use of such sensitive information.

The proposed complaint alleges that Mobilewalla has caused or is likely to cause substantial injury in the form of loss of privacy about day-to-day movements of consumers and an increased risk of disclosure of such sensitive information. Additionally, with respect to the fourth count, the proposed complaint alleges that Mobilewalla has caused or is likely to cause substantial injury in the form of the chilling of consumers' First Amendment rights and an increased risk of public or harmful disclosure of sensitive information about consumers' private lives, including their fertility choices, religious worship, sexuality, and other such sensitive information.

Summary of Proposed Order with Respondent

The Proposed Order contains injunctive relief designed to prevent Mobilewalla from engaging in the same or similar acts or practices in the future.

Geolocation data can vary significantly in its precision. The privacy concerns posed by the proposed complaint relate to more precise location data—that is, location data that could be used to identify specific locations a consumer visits. As a result, the Proposed Order is limited to location data that identifies consumers' locations in a geographic area that is equal to or less than the area of a circle with a radius of 1,850 feet.

Provision I prohibits Mobilewalla from misrepresenting (1) the extent to which it collects, maintains, uses, discloses, or deletes location data, and (2) the extent to which such data is deidentified.

Provision II prohibits Mobilewalla from collecting or retaining consumer information that Mobilewalla accesses while participating in RTB exchanges for any other purpose than participating in the auctions that occur on the exchange.

Provision III prohibits Mobilewalla from selling, licensing, transferring, sharing, disclosing, or using sensitive location data in any products or services.

Sensitive locations are defined as those locations associated with (1) medical facilities (e.g., family planning centers, general medical and surgical hospitals, offices of physicians, offices of mental health physicians and practitioners, residential mental health and substance abuse facilities, outpatient mental health and substance abuse centers, outpatient care centers, psychiatric and substance abuse hospitals, and specialty hospitals); (2) religious organizations; (3) correctional facilities; (4) labor union offices; (5) locations held out to the public as predominantly providing education or childcare services to minors; (6) locations held out to the public as predominantly providing services to LGBTQ+ individuals such as service organizations, bars and nightlife; (7) locations held out to the public as predominantly providing services based on racial or ethnic origin; or (8) locations held out to the public as predominantly providing temporary shelter or social services to homeless, survivors of domestic violence, refugees, or immigrants; (9) locations of public gatherings of individuals during political or social demonstrations, marches, and protests; or (10) military installations, offices, or buildings.

Provision IV requires that Mobilewalla implement and maintain a sensitive location data program to develop a comprehensive list of sensitive locations and to prevent the use, sale, license, transfer, or disclosure of sensitive location data.

Provision V prohibits Mobilewalla from selling or disclosing Location Data that may determine the identity or location of an individual's private residence.

Provision VI requires Mobilewalla to implement a Supplier Assessment Program by which they assess their suppliers and help ensure that consumers have provided consent for the collection and use of Location Data obtained by Mobilewalla. Under this program, Mobilewalla must conduct initial assessments of all suppliers within 30 days of entering into a data sharing agreement. The program also requires that Mobilewalla confirm that consumers provide Affirmative Express Consent, if feasible, or confirm that consumers provide specific consent to the collection, use, and sale of their location data. Mobilewalla must also create and maintain records of its Suppliers' assessment responses. Finally, Mobilewalla must cease from using, selling, or disclosing location data for which consumers do not provide consent.

Provision VII requires Mobilewalla to provide a clear and conspicuous means for consumers to request the identities of any third parties to whom Respondent sold or otherwise disclosed their location data during the one-year period preceding the request.

Provision VIII requires Mobilewalla to provide a simple, easily-located means for consumers to withdraw any consent provided and **Provision IX** requires Mobilewalla to delete and cease collecting location data after Mobilewalla receives notice that the consumer has withdrawn their consent.

Provision X also requires Mobilewalla to provide a simple, easily-located means for consumers to request that Mobilewalla delete location data that Mobilewalla previously collected and to delete the location data within 30 days of receipt of such request.

Provision XI requires that Mobilewalla (1) document and adhere to a retention schedule for the covered information it collects from consumers, including the purposes for which it collects such information, the specific business needs, and an established timeframe for its deletion, and (2) prior to collecting or using new type of information related to consumers that was not previously collected, and is not described in its retention schedule, update its retention schedule.

Provision XII requires Mobilewalla to delete any historic location data and consumers' unhashed and hashed phone numbers in their control and any work product created from this data and to instruct their customers to also delete this information, unless Mobilewalla contains a record in accordance with the Supplier Assessment Program (Provision VI) that consumers consented to the collection, use, and disclosure of their historic location data or the historic location data is deidentified or rendered non-sensitive.

Provision XIII requires Mobilewalla to establish and implement, and thereafter maintain, a comprehensive privacy program that protects the privacy of consumers' personal information.

Provisions XIV-XVII are reporting and compliance provisions, which include recordkeeping requirements and provisions requiring Mobilewalla to provide information or documents necessary for the Commission to monitor compliance.

Provision XVIII states that the Proposed Order will remain in effect for 20 years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the Proposed Order, and it is not intended to constitute an official interpretation of the complaint or Proposed Order, or to modify the Proposed Order's terms in any way.