



San Francisco Board of Supervisors
San Francisco City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

via postal mail, electronic mail, and facsimile

February 6, 2007

Dear San Francisco Board of Supervisors:

The ACLU of Northern California strongly supports the growth of wireless access and looks forward to a time when all of San Francisco will be able to utilize the wealth of information available on the Internet. However, none of us should be forced to pay for it with our privacy and free speech rights.

San Francisco is building a new communications infrastructure on behalf of its residents and the Board of Supervisors has a duty to ensure that it properly protects civil liberties. We are very concerned that the final municipal wireless contract with Google and Earthlink does not include adequate safeguards for privacy and free speech.

There are four key principles for any municipal Wi-Fi service :

1. The service should collect the minimum amount of personal information and maintain user records only so long as operationally necessary.
2. The service should not track user activities from session to session.
3. The service should not commercialize user data.
4. The service should only disclose the personal information of users when it is truly legally necessary and give notice to users about disclosures as quickly as possible.

Attached is a chart analyzing the final contract with Earthlink and Google and the lack of adequate safeguards in several of these key privacy and free speech areas.

It is not too late to ensure that San Francisco has a municipal wireless system that is truly accessible to all - one that is safe, affordable, and protects the fundamental rights of community members. For more information about privacy and free speech concerns with the municipal wireless system, including earlier letters sent to Chris Vein, please visit www.aclunc.org/tech or contact me at 408.282.8970 x 303 or via email at nozer@aclunc.org.

Sincerely,

Nicole A. Ozer
Technology and Civil Liberties Policy Director
ACLU of Northern California

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Privacy and Free Speech Analysis of Earthlink/Google Final Contract

Green =
Recommended Protections

Yellow =
Limited Protections

Red =
Lacks Adequate Safeguards

1. The service should collect the minimum amount of personal information and maintain user records only so long as operationally necessary.

As an intermediary, a wireless provider finds itself in a position to collect and store detailed information about its users and their online activities. Municipal wireless providers should be required to collect as little information as possible and keep it for no more time than is operationally necessary.

	Recommended Privacy and 1st Amendment Protections	Earthlink (monthly charge)	Google (no fee)
What personal information is collected about users?	None, if possible. Anonymous and pseudonymous access should be available.	No limitation in contract regarding the type of information that EarthLink can or will collect. Contract defines two types of information, "Protected Personal Information" ("PPI") and "unique information."	Only limitation in contract regarding the type of information that Basic Service Provider can or will collect is that "[U]sers shall be presented with options to register or login that require 'minimal' information from the user." (10.4.2) No definition of "minimal."

	Recommended Privacy and 1st Amendment Protections	Earthlink (monthly charge)	Google (no fee)
Are mechanisms available to allow users to opt in or opt out of any service that collects, stores, or profiles information on the searches performed, websites visited, e-mails sent, or any other use of the Network?	Opt in should be the standard for services that exceed the basic function of providing individuals with Internet access.	No provisions in the contract for users to opt-in or opt-out of any service that collects, stores, or profiles information on the searches performed, websites visited, emails sent, or any other uses of the Network.	No provisions in the contract for users to opt-in or opt-out of any service that collects, stores, or profiles information on the searches performed, websites visited, emails sent, or any other user of the Network.

	Recommended Privacy and 1st Amendment Protections	Earthlink (monthly charge)	Google (no fee)
Are mechanisms available to allow users to opt in or opt out of any service that tracks information about the user's physical location?	Providers should take all reasonable steps to enable location-based services without creating a tracking or logging mechanism that will create records of individuals' location.	Opt out option for Location Information. However, opt-out does not preclude EarthLink from using Location Information to: (i) enable a device to connect to the Network; (ii) provide other services which use Location Information from which the user has not opted out; (iii) comply with legal requests; or (iv) to protect EarthLink or its customers from a crime, fraud or network security breaches of a material nature.	No provisions in the contract regarding any mechanisms available to allow users to opt in or opt out of any service that tracks information about the user's physical location.

	Recommended Privacy and 1st Amendment Protections	Earthlink (monthly charge)	Google (no fee)
How long is this information stored?	A data retention schedule should specify that data is kept only for so long as needed to operate the network, and never more than a few weeks.	No limitation in contract regarding how long EarthLink can store PPI. EarthLink shall retain Location Information for no longer than sixty (60) days. However, this limitation does not apply to Aggregated Location Information or as required by: (i) Applicable Law; (ii) an order of an governmental authority evidenced by court-supported documentation; or (iii) a pending internal investigation to determine if a fraud, crime, or network security breach of a material nature has occurred. (10.3.1.4.b)	No limitation in contract regarding how long the Basic Service Provider can store any information.

2. The service should not track user activities from session to session.

While a municipal wireless company might desire to track users throughout sessions so that they can create detailed profiles to use for targeted advertising or to sell or trade to third parties, such profiling is unacceptable in a municipal wireless system. Such a log threatens both an individual's right to privacy, as well as his or her First Amendment right to speak and associate anonymously.

	Recommended Privacy and 1st Amendment Protections	Earthlink (monthly charge)	Google (no fee)
Is information correlated to a specific user, device or location?	Providers should correlate information to specific users, devices, or locations only to the extent necessary to operate the network.	Yes. Login information required for access. No limitations in contract regarding the correlation of information with a specific user, with a device or with a location. Providers should correlate information to specific users, devices, or locations only to the extent necessary to operate the network.	Yes. Login information required for access. No limitations in contract regarding the correlation of information with a specific user, with a device or with a location. Contract does stipulate that options for registration or login should "require minimal information from the user." Though contract includes no definition of what constitutes "minimal."

	Recommended Privacy and 1st Amendment Protections	Earthlink (monthly charge)	Google (no fee)
Are users enumerated or assigned any unique number that can be used to track them from session to session?	Providers should take all reasonable steps to design the system to prevent enumeration from session to session. Providers should obtain a user's voluntary affirmative consent before enumerating users across sessions.	No specific provision in the contract regarding the assignment of a unique identifier, however, the inclusion of "a unique identifier" in the definition of "unique information" indicates the assignment of a unique identifier to users.	No specific provision in the contract regarding the assignment of a unique identifier, however, the inclusion of "a unique identifier" in the definition of "unique information" indicates the assignment of a unique identifier to users.

3. The service should only use data for operation of the network and should not commercialize data without voluntary, opt-in consent.

The business model of a municipal wireless system should not include tracking and profiling user activities in order to sell or trade data or develop targeted advertising based on user information and online activities. Such a business model creates an incentive to collect as much data about an individual and maintain it for as long as possible in order to create profiles about users.

This tracking and profiling poses significant threats to privacy and free speech because users will need to worry that their Internet searches, activities, or interests might become known to others. With bridging the digital divide as a primary goal of the municipal wireless program, it is imperative that it be a system that properly safeguards privacy and free speech and enables everyone to feel comfortable accessing sensitive information.

	Recommended Privacy and 1st Amendment Protections	Earthlink (monthly charge)	Google (no fee)
How is this information used?	Only for purposes necessary to operation of the network.	No limitation in contract about how EarthLink may use the collected information.	No limitation in contract about how Basic Service Provider may use the collected information.

	Recommended Privacy and 1st Amendment Protections	Earthlink (monthly charge)	Google (no fee)
Is information sold, traded, or used for targeted advertising?	Providers should not commercialize personal information without voluntary, opt-in consent.	No limitations in contract regarding commercialization of data other than opt-out provision from receiving marketing communications.	No limitations in contract regarding commercialization of data.

4. The service should only disclose the personal information of users when it is truly legally necessary and give notice to users about disclosures as quickly as possible.

Service providers are the vital link between individuals and Internet resources and face pressures from other network users, industries, and governments to disclose personal information. Except in circumstances where law enforcement presents a court order binding the service provider to secrecy, the service provider should inform the user of a government request for information as soon as possible, and, in any event, the service provider should be prepared to litigate to avoid disclosing data if the request is legally insufficient.

	Recommended Privacy and 1st Amendment Protections	Earthlink (monthly charge)	Google (no fee)
When is information shared with third parties?	Only when necessary for operation of the network.	<p>Broad prohibition against sharing PPI with any person or entity without the voluntary, affirmative consent of the user with the following exceptions:</p> <ul style="list-style-type: none"> • Third Party Suppliers (“TPS”) to deliver or promote Earthlink’s services or to process payments, collection, order fulfillment and service delivery <p>Users may opt-out of receiving marketing communications from Earthlink or TPS, but no opt out for information-sharing.</p> <ul style="list-style-type: none"> • Entities that jointly promote EarthLink’s service to their customers. Again, users may opt out of receiving marketing communications from such entities or from EarthLink but no opt-out for the information sharing. • Law enforcement • Other persons or entities in connection with civil legal proceedings. 	No limitation in contract regarding sharing any information except with regard to sharing with law enforcement or in response to civil litigation. See below.

	Recommended Privacy and 1st Amendment Protections	Earthlink (monthly charge)	Google (no fee)
Are Policies in Place to Respond to Legal Demands for Users’ Personal Information?	Providers should only provide user’s personal information in response to a legally sufficient request. Unless directly prohibited by law, providers should give the user reasonable notice of the legal demand before complying.	Broad disclosure provisions without requiring a warrant and without prior notice to user for law enforcement and national security investigations, though shall require “court ordered documentation” when allowed by law. Earthlink shall provide reasonable prior notice to user, unless prohibited by law, before disclosing information in response to a civil legal demand.	Contract requires that Google at least comply with the same requirements as Earthlink.