



May 14, 2007

Dear San Francisco Supervisor:

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 Internet access with our privacy and free speech rights.

I am writing this letter to bring to your attention several provisions of the Earthlink/Google contract that can, and should, be modified in order to properly protect privacy and free speech. The proposed changes are modest and should not slow down the overall process should you want to approve the contract. However, these changes will help ensure that there are at least some basic protections for privacy and free speech. Other cities, such as Portland and Philadelphia, have included protective clauses in their final contracts.

What Do Privacy and Free Speech Have to Do With Muni WiFi?

The Internet is a wonderful resource for information. Many of us have turned to the Internet to seek information about sensitive issues that we might not want everyone else to know about—health information, including reproductive health, LGBT issues, or religious or political information that might differ from the prevailing attitude of a community.

The city's contract, as written, undermines the great potential of municipal wireless to increase access to information. Giving Earthlink and Google the power to track who we are, what we are looking at on the Internet, and where we are looking at it from, means that fewer of us will be comfortable using the system due to fear of where information about us will end up.

Companies want free reign to collect information about us so they can maximize profits from targeted advertising or have more data to share and trade with other companies. But, not ensuring that there are some limitations on the collection and storage of such information is very bad for San Franciscans. Once Earthlink and Google collect our information, we will not know who will get access to it. Not only will it likely be shared with other companies and used in ways we never intended, but the government can simply ask for our information with a subpoena and get it—warrant requirements do not apply to information held by a third party like Earthlink or Google.

Earthlink and Google are not doing San Francisco a favor by installing a wireless system. They stand to make substantial profits. San Franciscans should not be paying twice—with their dollars and with their privacy and free speech rights. It is now up to you to ensure that the rights of community members are adequately protected by insisting on the modifications to the contract that are detailed below.

M. QUINN DELANEY, CHAIRPERSON | ROBERT CAPISTRANO, SUSAN FREIWALD, LISA HONIG, NATALIE WORMELL, VICE CHAIRPERSONS | NANCY PEMBERTON, SECRETARY/TREASURER
MAYA HARRIS, EXECUTIVE DIRECTOR | CHERI BRYANT, DEVELOPMENT DIRECTOR | ERIKA CLARK, COMMUNICATIONS DIRECTOR | JUSTINE SARVER, ORGANIZING DIRECTOR | ALAN SCHLOSSER, LEGAL DIRECTOR
ANN BRICK, MARGARET C. CROSBY, TAMARA LANGE, JULIA HARUMI MASS, MICHAEL RISHER, JORY STEELE, STAFF ATTORNEYS | NATASHA MINSKER, NICOLE A. OZER, MARK SCHLOSBERG, POLICY DIRECTORS
STEPHEN V. BOMSE, GENERAL COUNSEL

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA

39 DRIUMM STREET SAN FRANCISCO, CA 94111 | T/415.621.2493 | F/415.255.1478 | TTY/415.863.7832 | WWW.ACLUNC.ORG

Necessary Modifications to Earthlink/Google Contract

1. Currently No Limitations on Tracking Who We Are:

Now: There are currently NO LIMITATIONS in the contract to control what type of personal information can be collected by Earthlink and only a nebulous limitation on Google. Google can collect “minimal information.” But, what is “minimal” to Google may be extremely different than what is “minimal” to many San Franciscans.

Recommended Changes:

- **Anonymous and pseudonymous access should be available.**
- **At a minimum, the contract must define and limit the amount and type of personal information that can be collected by Earthlink and Google. Earthlink and Google should not be allowed to require multiple types of personal information in order to use the municipal wireless system.**

	Recommended Changes	Earthlink (monthly charge)	Google (no fee)
What personal information is collected about users?	<p>Anonymous and pseudonymous access should be available.</p> <p>At a minimum, define and limit the amount and type of personal information that can be collected by Earthlink and Google.</p> <p>Multiple types of personal information should not be required.</p>	<p>No limitation in contract regarding the type of information that Earthlink can or will collect.</p> <p>Contract defines two types of information, “Protected Personal Information” (PPI) and “unique information.”</p> <p>PPI: “personally identifies the person to which such information pertains.” Includes, but is not limited to, name, address, phone number, social security number, medical profiles, and credit card information.</p> <p>“Unique information,” includes, but is not limited to, “a unique identifier, email address, biometric information, Location Information, IP address or MAC address.</p>	<p>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)</p> <p>No definition of “minimal.”</p>

2. *Currently No Limitations on Tracking What We Are Looking At:*

Now: There are currently NO LIMITATIONS in the contract to limit Earthlink and Google from collecting and storing information about the activities of users. The contract, as written, is akin to someone following you in the library to monitor and record the books you are browsing.

Recommended Change:

- The contract should require that Earthlink and Google ask users for permission (opt-in) before any records are kept about their activities online.

	Recommended Change	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, emails sent, or any other use of the Network?	The contract should require Earthlink and Google to get user permission (opt-in) before any records are kept about their activities online.	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.

3. *Currently No Limitation on Google Tracking Where We Are/Inadequate Earthlink Limitations:*

Now: There is currently NO LIMITATION on Google tracking and recording your location when you use the wireless network.

The contract does require Earthlink to give users the option to opt-out of their location information being recorded and tracked for non-network purposes.

Recommended Changes:

- The contract should require that Earthlink and Google ask the permission (opt-in) of users before tracking their location.

- **At the very minimum, people using the Google (no fee) service should have the same ability to opt-out as those using the Earthlink (paid service). People should not have to pay for the Google service by allowing the company, and potentially the government, to know their physical whereabouts.**

	Recommended Changes	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?	The contract should require that Earthlink and Google ask the permission (opt-in) of users before tracking their locations. At a very minimum, people using the Google (no fee) service should have the same ability to opt-out as those using the paid service.	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 Earth-link 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.

4. Currently Little Limitation on How Long Our Personal Information is Kept:

Now: There is currently NO LIMITATION on how long Google can store any information.

Earthlink can store personal information for as long as it wants—it is only required to purge location information after 60 days.

Recommended Change:

- **The contract should require that our personal data—who we are, what we are looking at, and where we were located—be kept only as long as it is needed to operate the network, and never longer than 60-90 days.**

	Recommended Change	Earthlink (monthly charge)	Google (no fee)
How long is this information stored?	The contract should require that data be kept only as long as it is needed to operate	No limitation in contract regarding how long EarthLink can store PPI.	No limitation in contract regarding how long the Basic Service Provider can store any

	the network, and never longer than 60-90 days.	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)	information.
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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, including a more detailed analysis of the Earthlink and Google contract, please visit www.aclunc.org/tech or contact me at nozer@aclunc.org; 415.621.2493 x 306.

Sincerely,

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