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Coming Soon: Federal Regulation of the Internet of Things

April 15, 2016

The hands-off approach Washington has taken on regulating the Internet of Things ("IoT") may be about to change: the Department of Commerce, through its National Telecommunications and Information Administration ("NTIA"), has asked for public comment on what role the federal government should play in the further development of the IoT. After reviewing the public comments, NTIA intends to issue a "green paper" that will identify "possible roles for the federal government in fostering the advancement of IoT technologies." While the NTIA does not have the authority to adopt the regulations that may be proposed, companies involved in the IoT space should expect the green paper to provide a roadmap of intended future regulation that may be carried out by the Federal Trade Commission, Federal Communications Commission and other agencies.

NTIA identifies a number of areas where regulation should be considered:

- cybersecurity
- privacy
- health, safety and security
- cross-border data flows
- spectrum
- international trade
- advanced manufacturing

- protection of intellectual property
- standards policy
- internet governance
- big data
- entrepreneurship
- worker skills

Parties are already meeting with NTIA to try to shape the discussion in a manner that will benefit their business models. If your company operates in the IoT space, you should consider joining the conversation by filing comments with the NTIA no later than May 23.

Many questions, no answers

The NTIA's *Notice* is structured as a series of questions intended to focus on how the government can best foster IoT innovation and growth while protecting consumers and ensuring economic equity. Commenters are asked to define the term "Internet of Things" and whether there should be classifications such as consumer vs. industrial; public vs. private; device-to-device vs. human interfacing. These types of distinctions will become important as NTIA is asking commenters about the "appropriate level of protection to workers, consumers, patients and/or other uses of IoT technologies." Parties should assume that NTIA is thinking broadly and about more than just connected devices as the *Notice* references physical objects, infrastructure and environments as well as data applications and analytics. Parties should specifically focus on the "challenges" that NTIA identifies with IoT such as health, safety and security, as well as privacy and cybersecurity, as those areas are where regulation is most likely.

Technology and infrastructure are two areas of focus. The NTIA asks commenters to discuss issues such as interoperability; spectrum; interference; investment; resiliency and standards. NTIA also asks how government should quantify, measure and categorize the IoT sector, which could have long term implications for tax and import policies, among other things. While privacy and cybersecurity are discussed, NTIA also asks about consumer protection and how to ensure that disadvantaged communities or groups are not disproportionately

impacted.

NTIA also asks commenters to address international engagement and how the government should be involved setting or monitoring policies that will help US companies compete on a global basis.

How to get involved

NTIA is seeking broad input from all interested stakeholders and you should assume that the resulting green paper will shape government policy in the near term. We encourage all companies that are operating in the IoT space to consider participating in this important proceeding. For more information, please contact your Cooley relationship attorney or one of the attorneys listed on this alert.

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