

May 11, 2021

Mark Zuckerberg
Chief Executive Officer
Facebook
1 Hacker Way
Menlo Park, CA 94025

Dear Mr. Zuckerberg:

We write to respectfully ask Facebook to consider reversing WhatsApp's decision to update their new terms of service. We believe Facebook is potentially offering a false choice to users across the globe: accept the sharing of metadata with Facebook by May 15th or leave the platform altogether.¹ We join public interest groups and parliamentarians around the world in requesting that Facebook reverse this policy change.² We recognize the efforts of the Federal Trade Commission (FTC) and State Attorney Generals in their ongoing suit to enforce existing antitrust laws as they relate to Facebook's monopolistic conduct. However, this request is related to what we believe is a potential misuse of data that unless reversed goes into effect next week.

Facebook acquired WhatsApp in 2014 for \$19 Billion.³ At the time of the acquisition, you said that "[w]e are absolutely not going to change plans around WhatsApp and the way it uses user data. WhatsApp is going to operate completely autonomously."⁴ The FTC cleared the acquisition on the condition that WhatsApp "must continue to honor" its promises to limit the "nature of the data it collects, maintains, and shares with third parties."⁵ A WhatsApp blog post following the announcement repeated this promise: "Here's what will change for you, our users: nothing.... And you can still count on absolutely no ads interrupting your communication."⁶

In 2016, we believe WhatsApp broke its promise. Presenting a routine "update" on WhatsApp's terms and conditions, Facebook was given access to a range of user data with only 30 days' notice to opt out.⁷ This policy update allowed Facebook to collect metadata from WhatsApp users, stating it may use the information to make "product suggestions" and show "relevant offers and ads," an action we view as potentially harmful to an individual's data rights.⁸

¹ WhatsApp Blog, Facebook, February 18, 2021, <https://blog.whatsapp.com/more-information-about-our-update>

² Stop Facebook Save WhatsApp, last accessed April 30, 2021, <https://savewhatsapp.netlify.app/#>

³ Parmy Olson, Facebook Closes \$19 Billion WhatsApp Deal, FORBES (Oct 6, 2014), <https://www.forbes.com/sites/parmyolson/2014/10/06/facebook-closes-19-billion-whatsapp-deal/?sh=209050415c66>

⁴ Jessica Guynn, Mark Zuckerberg: WhatsApp worth even more than \$19 billion, L.A. TIMES (Feb. 24, 2014), <https://www.latimes.com/business/la-xpm-2014-feb-24-la-fi-tn-mark-zuckerberg-whatsapp-worth-even-more-than-19-billion-20140224-story.html>

⁵ Letter from Jessica Rich, Dir., Bur. of Consumer Protection of the Fed. Trade Comm'n, to Erin Egan, Chief Privacy Officer, Facebook, Inc., & Anne Hoge, Gen. Counsel, WhatsApp, 1–2 (Apr. 10, 2014), https://www.ftc.gov/system/files/documents/public_statements/297701/140410facebookwhatappltr.pdf

⁶ WhatsApp Blog, Facebook, February 19, 2014, available at blog. <https://blog.whatsapp.com/facebook>

⁷ <https://www.theguardian.com/technology/2016/aug/25/whatsapp-to-give-users-phone-number-facebook-for-targeted-ads>

⁸ WhatsApp Blog, Facebook, July 20,2020, archived version. <https://www.whatsapp.com/legal/privacy-policy>

With this latest update, WhatsApp is introducing new features for messaging between businesses and their customers on WhatsApp. WhatsApp has stated that though personal chats will remain private, the same cannot be said of chats conducted between businesses and individuals. Users would “opt in” to a chat-like interaction with businesses. A driver behind these interactions would be the data that Facebook has collected on users through Facebook, Instagram and WhatsApp. In other words, it sounds like a business that interacts with an individual user “may use that information for its own marketing purposes, which may include advertising on Facebook.”⁹ Our understanding is that this policy may not provide an option to opt out. As Facebook explains, users “won’t have full functionality of WhatsApp until [they] accept.”¹⁰

Today, WhatsApp is the most widely used messenger app in the world. It is the primary mode of communication for two billion people across the globe. The Digital Markets Investigation led by our colleagues on the House Judiciary Committee (HJC), acknowledges that Facebook’s own internal documents describe the network effects of Facebook, WhatsApp, and Messenger as “very strong.”¹¹ As the HJC report explains, “WhatsApp and other regional messaging apps have bimodal distribution of reach in countries—an all-or-nothing reach” and “messaging tends toward consolidation and market tipping. Most countries have a single messaging app or protocol because they cannot support multiple messaging apps.”¹²

Most WhatsApp users in the United States are from immigrant communities with ties abroad. Nationally, Hispanic users make up the strongest base at around 32 million people, meaning nearly half of all Hispanic Americans use WhatsApp, compared to around 16 percent of white Americans.¹³ We believe it may be challenging for U.S.-based Hispanics to switch to other social networks because WhatsApp is the primary way for them to connect with relatives and friends in Latin America where the market has tipped—WhatsApp usage is over 85 percent in Argentina, Colombia, Brazil, and Mexico.¹⁴ Latin Americans pay some of the highest mobile prices in the world making traditional text messaging unaffordable compared to WhatsApp which is mostly zero-rated.¹⁵

As Members of the Congressional Hispanic Caucus, we are concerned that WhatsApp’s policy change may leave our immigrant communities vulnerable to further ad targeting. We believe consumers deserve the option to use WhatsApp knowing that their privacy will be protected the

⁹ Nate Lanxon, Why WhatsApp’s New Privacy Rules Are Sparking Alarm, THE WASHINGTON POST (Jan. 20, 2021), https://www.washingtonpost.com/business/why-whatsapps-new-privacy-rules-are-sparking-alarm/2021/01/15/0d6f604a-5799-11eb-acc5-92d2819a1ccb_story.html

¹⁰ WhatsApp Blog, Facebook, What happens on the effective Date? <https://faq.whatsapp.com/general/security-and-privacy/what-happens-when-our-terms-and-privacy-policy-updates-take-effect>

¹¹ *Id* at pg 141

¹² *Id* at pg 140

¹³ Brooke Auxier and Monica Anderson, Social Media Use in 2021, PEW RESEARCH CENTER (April 7, 2021), <https://www.pewresearch.org/internet/2021/04/07/social-media-use-in-2021/>

¹⁴ Lucy Koch, WhatsApp Beats Out Instagram and Twitter Among US Hispanic Users, INSIDER (May 22, 2019), <https://www.emarketer.com/content/whatsapp-beats-out-instagram-and-twitter-among-us-hispanic-users>

¹⁵ *Id* see also Fernanda Saboia, The Rise of WhatsApp in Brazil Is About More than Just Messaging, HARVARD BUSINESS REVIEW (April 15, 2016) <https://hbr.org/2016/04/the-rise-of-whatsapp-in-brazil-is-about-more-than-just-messaging>

way the founders intended, and the way Facebook promised to uphold. Please give our request your full and fair consideration, consistent with applicable statutes and regulations.

Sincerely,

Lori Trahan
Member of Congress

Darren Soto
Member of Congress

Raúl Grijalva
Member of Congress

Nydia M. Velázquez
Member of Congress

Michael San Nicolas
Member of Congress

Jesús G. “Chuy” García
Member of Congress

Veronica Escobar
Member of Congress

Linda T. Sánchez
Member of Congress

Tony Cárdenas
Member of Congress