

November 12, 2014

Filed in ECFS

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Presentation, GN Docket No. 14-28, *Protecting and Promoting the Open Internet.*

Dear Ms. Dortch:

On Monday, November 10, Leigh Freund (AOL), Ed Black (CCIA), Jeffrey Blum (DISH), Julie Samuels (Engine), Althea Erickson (Etsy), Brian Rice (Facebook), Johanna Shelton (Google), Marvin Ammori (Internet Freedom Business Alliance), Michael Beckerman (Internet Association), Paula Boyd (Microsoft), Ari Shahdadi (Tumblr), Margaret Nagle (Yahoo!), David Segal (Demand Progress), and Nick Berning (MoveOn) met with Chairman Wheeler, Eric Feigenbaum, Daniel Alvarez, Sagar Doshi, Gigi Sohn, and Matthew DelNero of the FCC.

A key theme of the meeting advanced by a number of participants was support for President Obama's statement concerning his proposed plan for net neutrality. They argued that it struck the right balance to preserve the flourishing free market on the Internet. Many participants reinforced the importance of strong, enforceable and sustainable rules and urged the FCC to act expeditiously to put those rules in place.

In the meeting, additional points were made:

- The Commission has the legal authority and sufficient support in the existing docket to vote out these rules today.
- Title II forbearance should be implemented in such a way so as to encourage continued deployment and investment in networks by for example preserving pole attachment rights.
- There is concern with "sender-side" hybrid Title II proposals, doubting such proposals could effectively ban paid prioritization and expressing technical concerns that a sender-side model may not adequately account for peer-to-peer technologies.

Participants discussed several other discrete topics:

- Mobile: Several participants explained that the FCC could in fact impose strong network neutrality rules on mobile under Title II and there are strong arguments

in the record already to that effect. The FCC has both properly (and clearly) noticed that it may rely on Title III and Title II, and therefore reclassification would be at least a logical outgrowth of the notice. In addition, the FCC can merely re-interpret its own rules; the statute provides the FCC more than enough discretion to do so. For general analysis, participants pointed to ex parte filings by Public Knowledge,¹ the Open Technology Institute,² and Marvin Ammori.³ There is an abundant record on this topic.

- FTC authority: Several participants explained that, should the FCC reclassify, the FTC will retain authority over consumer protection and privacy for entities that are *not* common carriers. This extends to actions by actors across the economy and up and down the Internet stack, including for the BIAS providers *non-common-carrier* online and offline businesses. Meanwhile, Congress gave the FCC authority to protect consumers, including to protect their privacy, when common carriers are involved, which is why several participants encouraged the FCC not to forbear from section 222.
- Forbearance: The participants generally supported considerable forbearance. Every single participant agreed that there should be forbearance from rate regulation of consumer broadband (as proposed in President Obama's plan) if the FCC wisely pursues the plan. Moreover, one meeting participant suggested immediate forbearance from all the "easy" provisions now and further notices, when appropriate, to address the hard questions regarding, for example, specific rules on privacy and USF.

Respectfully submitted,

Marvin Ammori and Julie Samuels

¹ Ex Parte, November 7, 2014, <http://bit.ly/1wP0qdD>.

² Ex Parte, November 10, 2014, <http://bit.ly/11epb7p>.

³ Ex Parte, September 23, 2014, <http://bit.ly/1xudB3E>.