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November 17, 2014

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Notice of Ex-Parte Communication in GN Docket No. 10-127, *In the Matter of Framework for Broadband Internet Service*, and GN Docket 14-28, *In the Matter of Protecting and Promoting the Open Internet*.

Dear Ms. Dortch:

On November 13, 2014 the undersigned met with Amy Bender, legal advisor to Commissioner O’Rielly, to review the legal arguments made in my September 15, 2014 Reply Comments in the dockets listed above. A printed copy of the Reply Comments was provided to Ms. Bender.

In addition to the points made in the written comments, Mr. Comstock pointed out that the case of *Echostar Satellite LLC v. Federal Communications Commission*<sup>1</sup> also demonstrates how the court in the *Verizon* decision failed to conduct a standard statutory analysis or consider how Congress used defined terms in the Telecommunications Act. In *Echostar* the court noted that “Congress was adept at using the terms ‘satellite’ and ‘multichannel video programming distributor’ when it so chose. In contrast to cable television technology in *Southwestern Cable*, satellite television was not some new phenomenon Congress had no opportunity to contemplate when enacting § 624A.”<sup>2</sup> In a similar manner, information service was not a “new phenomenon” when Congress enacted the Telecommunications Act and Congress was adept at using the term. As a result, Congress’s decision not to use the term “information service” in section 706 must be respected by the courts and the FCC.

Respectfully submitted,

/s/ Earl Comstock

Earl W. Comstock

Cc: Amy Bender

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<sup>1</sup> 704 F.3d 992 (D.C. Cir. 2013).

<sup>2</sup> *Id.* at 999-1000.