

November 18, 2014

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Via Electronic Filing

Re: Notice of Ex Parte Communications, GN Docket Nos. 10-127, 14-28, MB Docket No. 14-57

Dear Ms. Dortch:

On November 14, 2014, Sarah Morris, Senior Policy Counsel for New America's Open Technology Institute (OTI); Chris Ritzo, Senior Technologist for OTI and Project Manager for Measurement Lab (M-Lab); and Collin Anderson, Independent Researcher for M-Lab made a presentation about recent M-Lab research findings to the following members of Federal Communications Commission (Commission) staff: Robert Cannon, Matt Warner, Walter Johnston, Adam Copeland, Alison Neplokh, Scott Jordan, Andrew Erber, Stephanie Weiner, Gigi Sohn, Eric Feigenbaum, Bill Rogerson, Shane Greenstein, Fahilla Cheng, Sagar Doshi, Octavian Carare, Matt DelNero, and Joel Rabinovitz..

Chris Ritzo made brief introductions to the group for both M-Lab and OTI.

On behalf of M-Lab, a research consortium of which OTI is a partner, Collin Anderson presented the findings from M-Lab's technical report entitled *ISP Interconnection and its Impact on Consumer Internet Performance*. A copy of that report as well as the slides from Mr. Anderson's presentation are being filed with this ex parte. Mr. Anderson began with an overview of the M-Lab platform, and detailed the manner that researchers are able to identify trends in the performance of consumer connectivity over time through comparative analysis.

Mr. Anderson then presented the findings of the report, which examines M-Lab's extensive network performance dataset to understand network interconnection's role in consumers' ability to access Internet services across the US. He noted the research reveals that consumer performance results are directly affected by the business relationships between interconnecting Internet Service Providers (ISPs), rather than solely technical causes. Further, the impact of interconnection conditions on access and performance was often strongly negative, leading in some cases to long periods of sub-broadband performance across the nation. Additionally, Mr. Anderson discussed M-Lab's discovery of prioritization across Cogent interconnections beginning in late February, and elaborated on the impact of these policies on measurement and how quality of service policies would relate to interconnection congestion. M-Lab's extensive and continuing research demonstrates the critical role of open measurement in helping policy makers,

engineers, and the public ensure reliable, ubiquitous Internet access for future generations.

In addition to M-Lab's technical presentation, Sarah Morris made a presentation about a policy brief from OTI's policy team that, drawing on the M-Lab findings, contextualizes that research amidst broader policy discussions, and recommends various next steps for the Commission. A copy of that paper, entitled *Beyond Frustrated: The Sweeping Consumer Harms as a Result of ISP Disputes* is also being filed with this ex Parte.

Specifically, Ms. Morris reiterated the concerns that OTI had already noted in the record about the risk of access fees charged by terminating Internet access providers to content companies or the hosts of content company traffic.¹ She explained that a ban on such access fees could help mitigate some of the consumer harms found through the M-Lab research. In addition, Ms. Morris emphasized the historical success of settlement-free interconnection, and suggested that a default in favor of settlement-free interconnection would be appropriate going forward. Finally, Ms. Morris urged the Commission to integrate ongoing oversight practices and data monitoring into Commission policy.

Ms. Morris noted that such monitoring should be independent and open, should measure the complete path that actual Internet users take to get to the content they seek to access so as not to allow bad behavior to creep in unmonitored (including both latency and bandwidth data), and should include the M-Lab platform as a source of the data. In addition to this type of technical monitoring, other reporting requirements on Internet service providers may also be appropriate. OTI is working to refine recommendations on what reporting would be most valuable to the Commission and the public.

Respectfully submitted,

/s/ Sarah Morris

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¹ Comments of the Open Technology Institute at New America, GN Docket Nos. 10-127, 14-28 (Sept. 15, 2014) at 17 *available at* http://www.newamerica.org/downloads/FCC_NN_Reply_Comments_FINAL.pdf.