

December 11, 2014

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

**Re: Notice of Ex Parte Communications, GN Docket Nos. 10-127, 14-28**

Dear Ms. Dortch:

On October 22, 2014, I met with Dan Ball, Jennifer Salhus, Joel Taubenblatt, Peter Trachtenberg, Roger Sherman, Michael Janson, Jim Schlichting, all of WTB, and Stephanie Weiner of OGC, with regard to the above captioned proceedings.

The 2014 Notice explicitly seeks comment on the ability and likelihood of providers offering paid prioritization services in a manner that would negatively impact rural and minority communities.<sup>1</sup> A recent example from the New York City effort to provide free wifi hotspots illustrates that the problem of “virtual redlining,” the decision by commercial providers to limit prioritized service to wealthier communities and to avoid communities of color because of racial stereotypes, is a very real concern.

New York City has decided to undertake a project to convert its remaining payphones into wifi hotspots available to the public.<sup>2</sup> Because these wifi hotspots are supported by paid advertising, speed will vary depending on location. Locations able to charge more for advertising will enjoy faster speed.<sup>3</sup> As the Daily News article explained:

The speedier systems are flanked by advertising — and advertisers prefer wealthier eyes. As a result, all of the 2,500-plus locations in Manhattan are high speed, giving the borough with 20% of the city’s population fully 65% of all the fast kiosks.

Meanwhile, the Bronx will get speedy Wi-Fi at 361 kiosks — just 6% of the fast Wi-Fi stations in the city. The borough will have

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<sup>1</sup> 2014 FNPRM at ¶51.

<sup>2</sup> “New York to Replace City Payphones With Powerful New Digital Hubs,” <http://www.timeout.com/newyork/blog/new-york-to-replace-city-pay-phones-with-powerful-new-digital-hubs>

<sup>3</sup> Greg B. Smith, “De Blasio’s Wifi Plan Gives Slower Service To Poorer Neighborhoods,” New York Daily News, Nov. 24, 2014. Available at: <http://www.nydailynews.com/new-york/exclusive-de-blasio-wi-fi-plan-slower-poor-nabes-article-1.2021146> (last accessed Dec. 10, 2014).

slower service at 375 non-advertising kiosks, which replace old payphones.

In some neighborhoods, speedy broadband will be even rarer.<sup>4</sup>

As this real life example indicates, the unfortunate reality is that commercial businesses prefer to reach wealthy customers and cling to racial stereotypes with regard to the buying patterns of non-white communities. No one disputes that carriers have the technical capability to offer prioritized services on a targeted basis, segmenting prioritization in ways that target “more desirable” customers and avoiding the expense of paying for prioritization to “less desirable” customers.

If the Commission were to permit paid prioritization, it would appear that the “common carrier prohibition” would prevent the Commission from addressing such practices. The common carrier prohibition explicitly prevents the Commission from requiring that carriers treat all customers equally, or mandate that prioritized service be sold to all on equal terms. If carriers decide to offer commercial businesses the opportunity to reduce cost by limiting prioritization to specific markets on the basis of zip code, census block, or other geographic demarcation, we can anticipate that – as with the NY City public wifi experience – businesses will avail themselves of this opportunity.

Rather than permit a two-tiered Internet that perpetuates traditional “red lining” practices online, the Commission should ban paid prioritization as intrinsically harmful to broad purposes of the Communications Act and Section 706 to ensure deployment to all Americans, an intrinsically unjust and unreasonable practice under Section 201(b), and an unjust and unreasonable discriminatory practice under Section 202(a).

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<sup>4</sup> *Id.*



In accordance with Section 1.1206(b) of the Commission's rules, this letter is being filed with your office. If you have any further questions, please contact me at (202) 861-0020.

Respectfully submitted,

/s/ Harold Feld  
*Senior Vice President*  
PUBLIC KNOWLEDGE

cc: Dan Ball  
Jennifer Salhus  
Joel Taubenblatt  
Peter Trachtenberg  
Roger Sherman  
Michael Janson  
Jim Schlichting  
Stephanie Weiner