



October 27, 2015

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

Dear Ms. Dortch:

On October 16, 2015, Sarah Morris and Laura Moy, Senior Policy Counsel for New America's Open Technology Institute ("OTI"), met with Scott Jordan, Chief Technology Officer, Madeleine Findley, Associate General Counsel with the Office of General Counsel, and Jerusha Burnett, Honors Attorney with the Consumer Policy Division of the Consumer and Government Affairs Bureau for the Federal Communications Commission ("FCC" or "Commission"). During that meeting, OTI made the following presentation regarding the transparency requirements outlined in the Commission's 2015 Open Internet Order ("2015 Order").¹

Specifically, OTI discussed the transparency requirements of Internet performance characteristics as contemplated by ¶¶ 165-167 of the 2015 Order, and the need for clearer guidance regarding how actual performance characteristics are measured and reported.² As the Commission did in its 2011 Advisory Guidance³, the FCC now has the opportunity to "offer initial guidance regarding specific methods of disclosure that will be considered to comply with the transparency rule adopted in the Commission's [2010] Open Internet Order."⁴

OTI urged the Commission to promote the use of open, transparent measurement platforms among Internet service providers (ISPs) to collect data about actual speed, latency, and packet

¹ *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report & Order, FCC 15-24 (rel. Mar. 12, 2015) at ¶¶165-167.

² *Id.*

³ *FCC Enforcement Bureau and Office of General Counsel Issue Advisory Guidance for Compliance with Open Internet Transparency Rule*, GN Docket No. 91-191, WC Docket No. 07-52 (rel. Jun. 30, 2011), available at https://apps.fcc.gov/edocs_public/attachmatch/DA-11-1148A1.pdf

⁴ *Id.*

loss. In addition, while open measurement platforms⁵ themselves are important, the Commission should also consider making recommendations for methodologies related to data processing, data aggregation, and methods of data analysis—all of which are critical to the interpretation of the numbers produced by any underlying network measurement methodology. The FCC should attempt to ensure that in complying with the transparency requirements of the 2015 Order, ISPs use methodologies that allow for validation and peer review by other researchers.

OTI noted that consumers considering broadband service offerings need to know whether the plan(s) they consider will be sufficient to support their specific needs. Therefore, actual performance characteristics should either include information about the extent to which actual performance varies from reported averages, or comprise conservative estimates of performance under circumstances when the network is at peak usage or congested.

Pursuant to the Commission’s rules, this notice is being filed in the above-referenced dockets for inclusion in the public record.

Respectfully submitted,

/s/ Sarah Morris
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⁵ See Measurement Lab, available at www.measurementlab.net. Measurement Lab (“M-Lab”) provides the largest collection of open Internet performance data currently available, and represents the efforts of a consortium of research, industry, and public interest partners, including OTI.