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September 25, 2008

Ex Parte via Electronic Filing

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Authorized Ex Parte Contact – WC Docket No. 06-150

Dear Ms. Dortch:

On September 24, 2008, the undersigned attorney for Google Inc. ("Google") spoke in person with Bruce Gottlieb, wireless advisor to Commissioner Michael Copps. During the course of that conversation, Mr. Whitt asked about the status of the FCC's pending reconsideration proceeding in the above-referenced docket, and reiterated consideration of Google's November 21, 2007 ex parte letter seeking clarification that the C Block licensee may not impose "unreasonably discriminatory" charges or conditions "on customers who seek to use devices or applications outside of those provided by the licensee."[1] A copy of Google's original ex parte letter is attached.

Should you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,

Richard S. Whitt, Esq.
Washington Telecom and
Media Counsel
Google Inc.

[1] 700 MHz Order, at para. 222.

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November 21, 2007

Ex Parte via Electronic Filing

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: WC Docket No. 06-150

Dear Ms. Dortch:

Google Inc. ("Google") has participated actively in the 700 MHz auction proceeding, and publicly advocated for the open platforms license conditions that were adopted for the C Block as part of the Second Report and Order in the above-referenced docket.[1] Further, as a prospective bidder in the upcoming auction, Google has a significant interest in ensuring that licensees enjoy sufficient flexibility to put together pro-consumer business models that still comport in all material ways with the license conditions. This letter requests that the FCC clarify one narrow aspect of the 700 MHz Order, preferably prior to the December 3, 2007 short-form filing deadline.

Paragraph 222 of the 700 MHz Order discusses specific elements of the open platforms conditions, and includes the following sentence**:**

> In that regard, we emphasize that C Block licensees may not impose any additional discriminatory charges (one-time or recurring) or conditions on customers who seek to use devices or applications outside of those provided by the licensee.[2]

Google seeks clarification about the quoted language. The phrasing differs from the traditional statutory formulation prohibiting "unjust or unreasonable discrimination … for like communication service," contained in Section 202(a) of the Communications Act of 1934.[3] The apparent difference between the order language and the familiar statutory standard could create needless uncertainty and confusion during the actual implementation process. By not including the usual qualifier, the current text could be read to prohibit *any* differential pricing or conditions -- no matter how just or reasonable. Different products and services will, of course, be priced differently, a situation distinct

[1] Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, FCC 07-132, Second Report and Order, released August 10, 2007 ("700 MHz Order").
[2] 700 MHz Order at para. 222.
[3] 47 U.S.C. § 202(a) (2007).

from unreasonably discriminatory charges, but which might be barred under the current order language. For example, the FCC long has interpreted the Section 202(a) standard as permitting volume and term discounts, based on a customer's commitment to use certain amounts of service over certain periods of time. Yet, without clarification, it might be argued that the current language precludes such objectively cost-based discounts for consumers. Indeed, the cited language even could be interpreted as mandating cost studies and other stringent pricing support for all C Block-related services and applications. We believe the FCC did not intend to extend the reach of the C Block license conditions in such an unnecessary, and even counterproductive, manner.[4]

Therefore, Google respectfully requests that the Commission clarify that the quoted language in paragraph 222 is intended to refer to the traditional statutory protections that bar "unjust" and "unreasonable" discrimination, and do so by adding a single word: "unreasonably." The modified phrase thus would prohibit C Block licensees from imposing "any additional unreasonably discriminatory charges (one-time or recurring) or conditions…."[5] Google believes this clarification would avoid the potential overbreadth of the current language. Importantly, whether the eventual licensee is a new entrant or an incumbent, we do not believe that this textual change would diminish the overall effectiveness of the C Block license conditions in guaranteeing open devices and open applications for end users. Google further respectfully requests that the FCC issue the clarification prior to the December 3, 2007 short-form filing deadline, so that prospective bidders have an opportunity to factor it into their auction planning.

Please contact the undersigned should you have any questions.

Respectfully submitted,

Richard S. Whitt, Esq.
Washington Telecom Counsel

cc: Chairman Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell

[4] So, if a C Block licensee wanted to charge its end user customers different prices for signing a two-year contract, or choosing online billing, or consuming more bandwidth, we believe those options should remain available, as they otherwise would be under the statutory allowance for "reasonable" discrimination. On the other hand, this does *not* mean that the C Block licensee should be permitted to levy differing charges for the use of devices or applications not preferred by the licensee for reasons of competitive advantage, or simply because they are third party devices or applications.

[5] In addition, it would be useful for the amended text to cite Section 202(a) of the Communications Act, so as to indicate that the language should be interpreted consistent with the FCC's precedent in this area.