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HOLCH & ERICKSON LLP

November 17, 2009

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

RE: Notice of *Ex Parte* Meeting, Docket Nos. 07-52, 09-191

Dear Ms. Dortch:

On Friday, November 13, 2009,<sup>1</sup> the following representatives from the Open Internet Coalition met with Shomik Dutta and Zachary Katz in the Office of Chairman Genachowski: Ben Scott (Free Press), Markham Erickson (Holch & Erickson LLP), Robb Topolski (New America Foundation), Jef Perlman (Public Knowledge), Emmett O’Keefe (Amazon), Christopher Libertelli (Skype), and Richard Whitt (Google).

We discussed several of the key issues raised by the proposed Notice of Proposed Rulemaking in the above-referenced dockets.

First, we discussed the proposed 5<sup>th</sup> principle on non-discrimination. Representatives noted that the principle should be a clear and straightforward standard that applies broadly across different broadband platforms.

Second, we discussed some of the key questions raised by the reasonable network management provision; these include the need to address technical and economic questions of whether prioritization is necessary and, if so, how such prioritization would be accomplished without harming the open Internet. We discussed possible suggestions by stakeholders for approaches to a reasonable network management standard, including the creation of a “white list” or “black list” of acceptable and unacceptable practices.

Third, representatives also emphasized that wireless platforms should abide by the same general principles, including a non-discrimination rule, as would apply to wireline platforms. At the same time, wireless providers should be allowed greater flexibility to engage in network management that accounts for pertinent aspects such as their different architectures.

Finally, representatives discussed the issues that would arise from allowing ISPs to provide “managed services.” We expressed the view that the ISPs should explain what

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<sup>1</sup> Due to a problem with an e-mail server, this *ex parte* notice is being filed a day late. The undersigned regrets the delay, and requests a waiver of Section 1.1206(b)(2) of the Commission’s rules and/or leave to file this *ex parte* notice a day later than specified in the rules.

types of applications would not be able to function properly over a “best-efforts” Internet access connection, and would require instead a “managed services” framework. In addition, we discussed whether a “managed services” framework could be structured in a way that increases incentives for network operators to invest in their networks and provide robust access to an open, best-efforts Internet.

Sincerely,

/s/

Markham C. Erickson

Counsel to and Executive Director of the  
Open Internet Coalition