

EX PARTE OR LATE FILED

December 22, 2009

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

FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

**Re: Notice of Ex Parte Communication
GN Docket No. 09-191; WC Docket No. 07-52**

ORIGINAL

Dear Ms. Dortch:

On Monday, December 21, 2009, W. Thomas Green, Jason Colquitt, and Tim Bell of Greenway participated in a telephone call with David Tannenbaum of the Office of General Counsel and Dr. Mohit Kaushal of the Office of Strategic Planning and Policy Analysis. The staff agreed to file this memorandum.

Mr. Green and his colleagues discussed their views, as providers of electronic health record services, regarding the preservation of an open Internet. In particular, they expressed their fear that internet service providers (ISPs) would enter into exclusive contracts with competitors to prioritize traffic or ensure quality of service, and contended that such arrangements should not be permissible under a legal regime that gave special treatment to "managed services." They asserted that such exclusive arrangements would create an uneven playing field and would stymie innovation and investment in electronic health records systems.

Mr. Green and his colleagues also suggested that in certain situations, data related to the provision of healthcare should take priority over less time-sensitive data. It is often the case that data accessed by healthcare providers and researchers is more time sensitive than data accessed directly by patients. But allowing service providers to charge fees for such prioritization would have a negative impact on the provision of electronic health records, especially in rural areas, where consumers are less able to shoulder additional costs.

Finally, Mr. Green and his colleagues discussed the likely concerns of other healthcare technology providers regarding the value of an open Internet. They suggested that concern for quality of service guarantees was correlated with providers' need to deliver time-sensitive bandwidth-intensive data.

Sincerely,

David Tannenbaum
Special Counsel
Federal Communications Commission