

January 20, 2010



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

Re: Notice of *Ex Parte* Presentation
GN Docket No. 09-137 (Advanced Telecommunications Inquiry)
GN Docket No. 09-51 (National Broadband Plan)
GN Docket No. 09-47 (Broadband Data Improvement Act)
CG Docket No. 09-158 (Consumer Information and Disclosure)
CC Docket No. 98-170 (Truth-in-Billing and Billing Format)

Dear Ms. Dortch:

On January 19, 2010, Sascha Meinrath, Director of the New America Foundation's Open Technology Initiative ("OTI"); and Matt Wood, Associate Director, Media Access Project ("MAP") (collectively, the "Public Interest Representatives") participated in two separate meetings with Commission staff. In attendance at the first meeting were members of the Commission's Omnibus Broadband Initiative, including Blair Levin, Executive Director; Peter Bowen, Applications Director; and Elvis Stumbergs, Attorney-Advisor. In attendance at the second meeting were members of the Wireline Competition Bureau ("WCB"), including Sharon Gillett, Bureau Chief; Cathy Seidel, Deputy Bureau Chief; and Carol Simpson, Deputy Chief of the WCB's Competition Policy Division.

In each meeting, the Public Interest Representatives stressed the need for Commission action to require greater transparency in and disclosure of broadband Internet access service providers' terms of service, network management practices, and network performance measurements. Commission oversight in this regard should include, at minimum, creating standardized performance metrics and presentation formats that will allow end-users to compare readily and easily the quality of service offerings from competing Internet access providers. The Commission also should adopt rules mandating disclosure of both basic and detailed broadband service measurements and other information to the public, including to current subscribers who may wish to consider changing providers; potential subscribers that desire information on the speed, reliability, robustness, and price of broadband service in their immediate geographic area; and other broadband users such as application, service, and content developers.

Rather than adopting static rules alone, the Commission should establish processes for updating and amending these regulations over time, so that the requirements can evolve with changing technologies and business models in this dynamic space. Nevertheless, as the Public Interest Representatives noted, decisive Commission action and leadership is vital in establishing these processes and adopting formal rules – both in conjunction with formulation and implementation of the National Broadband Plan and on a continuing basis thereafter. While the Commission must seek out and welcome comments from stakeholders such as network

scientists, advocacy organizations, industry representatives, and public interest groups, it also must adopt rules to promote greater transparency in the provision of services and infrastructure so essential to our nation's civic, social, political, and economic well-being. Thus, the Commission cannot wait for far-off and potentially elusive industry consensus, nor rely on vague and unenforceable voluntary commitments by broadband Internet access service providers to promote the public interest in this regard.

In the meeting with Omnibus Broadband Initiative representatives, Mr. Meinrath noted preliminarily that OTI has proposed the allocation of an additional \$1.2 to \$4.6 billion dollars for broadband deployment on native lands. Both meetings thereafter focused on discussion of broadband performance measurement initiatives and transparency proposals. During the course of the discussion, the Public Interest Representatives highlighted research data that indicates the presence of massive congestion at certain Internet peering points, accompanied by problematic arbitrage opportunities and supra-competitive mark-ups for the use of facilities necessary to navigate such bottlenecks.

Both meetings also featured extensive discussion of Measurement Lab (or "M-Lab"), and more specifically, research that M-Lab conducts and facilitates on topics of great importance to the Commission's ongoing national broadband plan and broadband mapping efforts, as well as its consumer information disclosure and transparency initiatives.

M-Lab is a collaborative effort founded by OTI, the PlanetLab Consortium, Google Inc., and an array of Internet researchers – academics who devote their time to the investigation of critical questions regarding the design, deployment, and performance of broadband networks around the globe. The goal of M-Lab is "to advance network research and empower the public with useful information about their broadband connections."¹ It accomplishes this goal by providing users with innovative tools that test and measure the data rates of Internet connections, but such measurements do not focus solely on "last mile" or ISP network performance. M-Lab tools instead measure performance on each and every link between M-Lab's high-capacity servers and the end-user's device, including the user's home network and router, pinpointing any congestion or performance-limiting factors within each link.

M-Lab does not collect or store personally identifiable information in the course of conducting such tests. All of the technical data that M-Lab gathers, however, during approximately 100,000 user-initiated tests per day at the present time, is made freely available to regulators, researchers, developers, and Internet end-users alike. M-Lab data is made available pursuant to a royalty-free creative commons license. The platform utilizes open source software that also is freely and readily available to developers who wish to propose and build peer-reviewed measurement tools using M-Lab as the powerful "back-end" for such applications. Public access to granular Internet performance metrics and data of this scope and quality contributes greatly to sustaining a healthy, innovative Internet.

Mr. Meinrath described to the Commission staff present at each meeting M-Lab's mission, structure, and strategies; its current work, resources, and research output; and its potential plans for future development and adaptation of the platform. The participants in each

¹ See "About Measurement Lab," at <http://www.measurementlab.net/about> (last visited Jan. 15, 2010).

meeting also discussed potential uses that the Commission might make of the M-Lab platform's tools and data in pursuing the Commission's mandate to develop the national broadband plan, improve broadband mapping and data-gathering, and enhance the transparency and accuracy of information disclosed to broadband Internet access service consumers.

We submit this letter to the Secretary's office today pursuant to Section 1.1206(b) of the Commission's rules, 47 C.F.R. §1.1206(b). Please contact the undersigned should you have any questions regarding this submission.

Respectfully submitted,

/s/ Matthew F. Wood

Associate Director
Media Access Project

cc: Blair Levin
Peter Bowen
Elvis Stumbergs
Sharon Gillett
Cathy Seidel
Carol Simpson