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JAN 15 2010

Federal Communications Commission
Office of the Secretary

January 15, 2010

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

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

Dear Ms. Dortch:

On January 13, 2010, Brad Burnham of Union Square Ventures met with Paul de Sa and Zachary Katz, Office of Strategic Planning and Policy Analysis; Sharon Gillett and Carol Simpson, Wireline Competition Bureau; David Tannenbaum, Office of General Counsel; and Christi Shewman, Office of Commissioner Baker.

Mr. Burnham explained that his venture capital firm invests in the application layer of the Internet, with a focus on technologies that leverage social participation. The firm tries to avoid gatekeepers, and for that reason has rarely invested in wireless applications.

He believes that permission-less innovation is the key to socially beneficial outcomes. He suggested that the benefits of open networks are apparent when one compares the innovation that has occurred on wireless networks with the innovation that has flourished on the Internet. He pointed to the example of the competition to develop applications that utilize data released by the federal government, and noted that this competition would be impossible on a permission-based network.

Mr. Burnham asserted that software-based platforms should be treated differently from infrastructure-based platforms because the former can exercise only horizontal leverage, while the latter can exercise vertical leverage. He contended that large carriers, and large companies in general, are more risk averse than small application developers, and thus less likely to generate innovative products. He also challenged the assertion that carriers have the right to appropriate surpluses generated by application developers.

Mr. Burnham believes that type-based prioritization would threaten innovation, but that prioritization based on volume of data transferred or based on a prioritization flag would be not be as threatening. He asserted that if ISPs require subsidization in order to build out open networks, that subsidization would be justified by the application-based innovation that would result.

Sincerely,

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David Tannenbaum
Special Counsel
Federal Communications Commission