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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, David Clark of the MIT Computer Science & Artificial Intelligence Laboratory 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.

Dr. Clark urged the Commission to evaluate the proposed rules within a broader framework of policy objectives. He asserted that "openness" is an imprecise word that is not specific enough to guide policymaking. He noted that the Internet principles were focused on the consumer, but that the proposed Open Internet rules are directed at Internet service providers, and asserted that any policy should take account of all the actors' interests. He was therefore glad that the proposed rules were written in general terms that allow case-by-case evaluations.

Dr. Clark asserted that the network management practices that cannot be easily characterized in advance as "reasonable" or "unreasonable" network management are where much innovation will occur, and that policy should therefore encourage those types of practices.

He suggested that ISPs can be regarded as (1) static entities that simply provide infrastructure, or (2) partners to application developers. The latter approach is preferable. He contended that if ISPs are treated as partners they will be less likely to act capriciously. Therefore the FCC should encourage cooperation between ISPs and application developers, rather than impose regulations. He noted that in an environment conducive to cooperation, ISPs could have provided hardware to content delivery networks.

Dr. Clark explained his discomfort with the proposed non-discrimination rule and stated that content providers should be able to pay for priority. He also asserted that quality of service is critical for innovation, and that requiring users to pay to receive packets marked for enhanced quality of service in a metered usage environment is dangerous because malicious senders could flood users with unwanted packets. By

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contrast, if content providers (senders) must pay for priority, they will self-police. As an illustration of a sort of behavior that seems reasonable, but might or might not be precluded by the current proposed rule, he pointed out that users inevitably will have to pay ISPs based on data usage, and when that occurs content providers should be able to strike deals whereby their packets don't consume a user's quota.

Dr. Clark asserted that regulating entities to act against their interests is futile, and that ISPs caught interfering with user speech will be excoriated in the market. He also stated that home monitoring tools are a good solution to preventing bad behavior, but that current tools do not give sufficiently accurate or clear information. Finally, he noted that many users do not have access to a completely neutral Internet today (e.g., even some universities block certain ports associated with well-known security vulnerabilities).

Sincerely,

David Tannenbaum
Special Counsel
Federal Communications Commission