

February 4, 2010

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



Re: Notice of *Ex Parte* Presentation
CG Docket No. 09-158 (Consumer Information and Disclosure)
GN Docket No. 09-137 (Advanced Telecommunications Inquiry)
WT Docket No. 09-66 (Mobile Wireless Competition)
GN Docket No. 09-51 (National Broadband Plan)
GN Docket No. 09-47 (Broadband Data Improvement Act)
WT Docket No. 05-194 (Early Termination Fees)
CC Docket No. 98-170 (Truth-in-Billing and Billing Format)

Dear Ms. Dortch:

On February 3, 2010, Joel Kelsey of Consumers Union, Chris Riley of Free Press, Sascha Meinrath and Benjamin Lennett of the New America Foundation's Open Technology Initiative ("OTI"), and Parul Desai and Matt Wood of Media Access Project (collectively, the "Public Interest Representatives"), participated in two separate meetings with Commission staff. In attendance at the first meeting were Joel Gurin, Bureau Chief, Consumer and Governmental Affairs Bureau ("CGB"); Yul Kwon and Mark Stone, Deputy Bureau Chiefs, CGB; and Michael J. Jacobs, Legal Advisor to the Bureau Chief, CGB. In attendance at the second meeting were Ruth Milkman, Bureau Chief, Wireless Telecommunications Bureau ("WTB"); Monica Desai and John S. Leibovitz, Deputy Bureau Chiefs, WTB; and Christina Clearwater, Assistant Chief, Competition Policy, in WTB's Spectrum & Competition Policy Division.

In each meeting, the Public Interest Representatives stressed the need for Commission action to mandate greater transparency in, and disclosure of, communications providers' prices, terms of service, network management practices, and network performance measurements. The meeting with Ms. Milkman and WTB staff focused on disclosure practices and priorities for wireless providers, while the meeting with Mr. Gurin and CGB staff focused more generally on Commission policies with regard to both wireline and wireless providers. Commission oversight in this regard should include, at minimum, the adoption of standardized performance metrics and presentation formats that will allow end-users to compare service offerings from competing providers. The Commission also should adopt rules mandating disclosure to the public of broadband service measurements and other information, in both basic and detailed formats, so that such information will be more readily available to current subscribers who may wish to consider changing providers; potential subscribers that desire information on the speed, reliability, robustness, and price of service in their immediate geographic area; and other users of communications services, 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 should seek out and welcome comments from stakeholders such as network scientists, advocacy organizations, industry representatives, and public interest groups, it 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.

Both meetings included discussion of the best format in which to provide such information to end-users, a topic of great importance to the Commission and the Public Interest Representatives alike. While that topic remains ripe for further exploration and analysis, the Public Interest Representatives asserted that the Commission should act now to promulgate disclosure rules, not 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. OTI’s Broadband Truth-in-Labeling proposal, previously submitted in CG Docket No. 09-158 and GN Docket No. 09-51, and attached hereto, provides one concrete example of how the most basic and essential information could be presented by providers, so long as more detailed information is readily available as well.

Both meetings also included discussion of Measurement Lab (“M-Lab”), a collaborative effort founded by OTI and various partners. M-Lab conducts and facilitates research vitally important to the Commission’s ongoing national broadband plan and broadband mapping efforts, as well as its consumer information disclosure and transparency initiatives. M-Lab provides users with innovative tools that test and measure the data rates of Internet connections – testing every link between its high-capacity servers and the end-user’s device, including the user’s home network and router – to pinpoint any congestion or performance-limiting factors within each link. All of the technical data that M-Lab gathers during approximately 100,000 user-initiated tests per day at present is made freely available pursuant to a royalty-free creative commons license, and the platform utilizes open source software 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.

Finally, both meetings included discussion of letters sent by CGB and WTB to the largest wireless providers in January 2010 in order to gather information on those companies use of – and justifications for imposing – early termination fees (“ETFs”). The Public Interest Representatives expressed their support for the Bureaus’ inquiries. The Public Interest Representatives also reiterated their organizations’ previously submitted statements on ETFs that apparently have no basis in carrier’s costs, and that serve only to lock-in customers while generating revenue for the carriers. Such fees are both a sign of and a contributing factor to a failed market – one in which carriers have the incentive and ability to inhibit consumers from switching service providers during the course of lengthy contracts. Obviously, carrier programs that fairly subsidize wireless devices would not necessarily harm consumers. Nevertheless,

companies imposing ETFs should be required to disclose fully and openly the terms and conditions of those fees before customers take service, and carriers also should be required to justify their ETFs on the basis of the actual cost of the subsidy recouped during the term of the service contract.

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: Joel Gurin
Yul Kwon
Mark Stone
Michael J. Jacobs
Ruth Milkman
Monica Desai
John S. Leibovitz
Christina Clearwater