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May 3, 2010

## VIA ECFS

Marlene Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, S.W.  
Washington, DC 20554

Re: *Ex Parte* Notice; WC Dockets No. 09-191 and 07-52

Dear Ms. Dortch:

On April 26, 2010, in response to reports of a class action settlement entered into by RCN Corporation (“RCN”) on July 31, 2009,<sup>1</sup> reply comments were filed in Dockets GN 09-191 (Preserving the Open Internet) and WC 07-52 (Broadband Industry Practices) by parties alleging that the settlement demonstrated that RCN had engaged in broadband network management practices that were the same as the Comcast practices that the Commission found to have violated the Commission’s open Internet principles.<sup>2</sup>

In fact, RCN’s network management practices differed substantially from those discussed in the Commission’s *Comcast Order*. In particular, RCN did not originate forged reset packets, nor did it otherwise interrupt TCP sessions once established. Consistent with the Commission’s Internet Policy Statement,<sup>3</sup> RCN did not deny its subscribers access to lawful Internet content of their choice, did not deny them the ability to run applications and use services of their choosing, did not affect competition among network providers, application and service providers and content providers, and did not inhibit or restrict its subscribers’ ability to connect legal devices to the broadband network.

Moreover, even if other parties were to disagree with RCN’s position that the practices were consistent with the FCC’s Policy Statement, RCN fully discontinued those policies

<sup>1</sup> *Sabrina Chin vs. RCN Corporation*, Civ. Action No. 1:08-CV-7349 (S.D.N.Y.).

<sup>2</sup> *See* Reply Comments of Free Press, GN Docket No. 09-101 and WC Docket No. 07-52, at 2, 8-9 (filed Apr. 26, 2010); *see also* Reply Comments of Center for Media Justice, Consumers Union, Media Access Project and New America Foundation, GN Docket No. 09-101 and WC Docket No. 07-52, at 18-19 (filed Apr. 26, 2010).

<sup>3</sup> *Policy Statement*, FCC 05-151, at 3 (released Sept. 23, 2005).

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as of May 1, 2009, and the capability to implement those discontinued traffic management practices has been removed from the RCN network. Even if RCN wanted to do so, which it has no plans to do, the practices in question could not be resumed without substantial new investment, and the economic and technical factors that led it to adopt its network management plan in 2005 have abated. In addition, the settlement agreement in the *Chin* case provided for independent monitoring of the RCN network and the independent monitor retained as part of the class action settlement has not informed RCN that he has detected any peer-to-peer network management practices in the course of his monitoring of the network. Of course, should the Commission adopt new rules governing network management by ISPs that codify or expand its Internet Policy Statement, RCN will comply with those rules.

Within one week, RCN will file a more detailed response and description of the network management practices at issue in the *Chin* litigation in Docket 09-191, that it believes will demonstrate that its network management practices were reasonable network management and consistent with the Commission's Policy Statement.

Should you have any questions concerning this information, please do not hesitate to contact me.

Respectfully submitted,

*/s/ Jean L. Kiddoo*

Jean L. Kiddoo

cc (via email): John Nakahata  
Richard Ramlall