

May 24, 2010



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

Re: Notice of *Ex Parte* Presentation
GN Docket No. 09-51 (National Broadband Plan)
GN Docket No. 09-191 (Preserving the Open Internet)

Dear Ms. Dortch:

On Friday, May 21, 2010, Tyrone Brown, Andrew Jay Schwartzman, and Matt Wood of Media Access Project (the “MAP Participants”) met with Austin Schlick, General Counsel to the Federal Communications Commission, and Julie Veach, Deputy General Counsel. During that conversation, the MAP Participants reiterated the organization’s position, as set forth more fully in certain filings in the above-captioned dockets, regarding the proper statutory classification under Title II of the transmission component of broadband Internet access offerings.

The MAP Participants generally expressed support for the “Third-Way” approach outlined in statements made by Chairman Genachowski and by Mr. Schlick earlier in May. The MAP Participants then urged the Commission to follow through expeditiously on this proposed approach to making the classification determination, citing the need for regulatory certainty and timely implementation of the National Broadband Plan.

The MAP Participants also discussed the Commission’s authority to make the determination, suggesting that the decision can and must be grounded in thorough a statutory analysis – one that would be veritably unassailable if based on a proper interpretation of the Telecommunications Act of 1996 and careful consideration of the basis for prior Commission decisions. In that regard, the MAP Participants proposed a functional definition of broadband transmission that fits well within the current statutory framework, especially considering relevant statutory provisions that define “telecommunications services” without regard for the facilities used to provide such transmission, *see* 47 U.S.C. § 153(46), and that exclude from the definition of “information services” any such capabilities used for “the management of a telecommunications service.” *Id.* § 153(20).

Finally, the MAP Participants suggested that the Commission undertake a careful, section-by-section forbearance analysis for various Title II provisions, in order to contribute to the regulatory certainty mentioned above. That forbearance analysis should be calibrated, however, so that the Commission neither removes too few obligations for carriers, nor eliminates too many protections for broadband users and consumers by forbearing from provisions necessary for effective oversight.

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: Austin Schlick
Julie Veach