

June 1, 2010

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

RE: Notice of *Ex Parte* presentation in: GN Docket No. 09-191
 WC Docket No. 07-52
 GN Docket No. 09-51
 GN Docket No. 09-137
 CG Docket No. 09-158
 CC Docket No. 98-170

Dear Ms. Dortch:

On behalf of Public Knowledge, this letter is to provide information relating to discussions between Public Knowledge (PK) and members of the Commission's staff on May 28, 2010.

Present at the meeting were: Harold Feld, Legal Director, PK; Sherwin Siy, Deputy Legal Director, PK; John Bergmayer, Staff Attorney, PK; Christopher Reilly, Legal Intern, PK; Austin Schlick, Julie Veach, and David Tannenbaum of the Office of General Counsel; and Zachary Katz of the Office of Strategic Planning and Policy Analysis.

Regarding wireless transmission, PK argued that the Commission should classify wireless and wireline broadband the same way, as Title II telecommunications services. PK asked that the Commission engage in a diligent effort to explore the implications of classifying wireless as Title I information services or Title II telecommunications services. Defining wireless and wireline as different types of service would raise questions as to whether the two services could be substitutes, which would have consequences in later analyses. Furthermore, defining wireless as Title I could jeopardize the use of the Universal Service Fund to promote wireless service.

Regarding forbearance, PK asked whether the Commission could find, under Section 706, that advanced telecommunications capability is being deployed in a timely manner, and what impact that would have under Title I and Title II. With regard to Title II, a finding under Section 706 would support the condition that forbearance serves the public interest, one prong of Section 10.

PK reiterated previously addressed concerns with too expansive a reading of Title I authority.¹ Additionally, PK suggested that the Commission inquire into whether authority under Title I ancillary to Section 706 would enable regulation to continue once deployment of advanced telecommunications capability had been achieved in a timely manner.

¹ Comments of Public Interest Commenters, GN Docket No. 09-191, WC Docket No. 07-52 at 6-7 (dated January 14, 2010); Reply Comments of Public Knowledge, GN Docket No. 09-191, WC Docket No. 07-52 at 4-6 (dated April 26, 2010).

Regarding a *Notice of Inquiry*, PK argued that any such *Notice of Inquiry* should stress that what the Commission seeks in reclassifying broadband is a strong foundation for its *entire* broadband policy, including all of the goals of the National Broadband Plan. Justifications for placing broadband in Title I or Title II should address how such a classification would allow the Commission to meet all of its goals vis-à-vis broadband. Commenters should be expected to make the full case for a classification, instead of arguing on select goals.

Regarding equal access, PK argued that Title II has aided the Commission in meeting its Section 257 responsibility to provide access to traditionally underserved communities. Under Title II, the Commission could compel providers to deploy service to these communities. In order to ensure that service continues to be deployed to these communities, the Commission should inquire as to whether it has sufficient authority under Title I to meet this goal. Furthermore, service providers should be asked how best to ensure that these communities are provided with broadband service.

In accordance with the FCC's *ex parte* rules, this document is being electronically filed in the above-referenced dockets today.

Sincerely,

_____/s/
Christopher Reilly
Legal Intern
Public Knowledge

CC: Austin Schlick
Julie Veach
David Tannenbaum
Zachary Katz