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CENTER FOR DEMOCRACY  
& TECHNOLOGY

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December 7, 2010

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St. SW  
Washington, DC 20554  
*Filed Electronically*

RE: Notice of *ex parte* presentation in:

GN Docket No. 09-191  
WC Docket No. 07-52  
GN Docket 10-127

Dear Ms. Dortch,

On Tuesday, December 7, David Sohn and Andrew McDiarmid of the Center for Democracy and Technology (CDT) met with Margaret McCarthy, Policy Advisor to Commissioner Copps. We discussed the Open Internet proceeding and the scheduled vote on proposed rules scheduled for the December 21 open meeting.

Consistent with its written comments in the above captioned proceedings, CDT stressed the importance of the FCC adopting rules in this area. CDT expressed its preference for rules based on the Chairman's "third way" proposal earlier this year. We noted that whatever the legal theory, however, any final order should make clear that the FCC's assertion of authority is limited to access lines and does not extend to content or applications flowing over those lines. CDT suggested that the FCC expressly disclaim such potentially sweeping authority.

CDT further suggested that concerns regarding any definition of broadband Internet access could be alleviated by saying that if a service functions to a substantial degree as a substitute for broadband Internet access, or otherwise is offered with the purpose or effect of evading the open Internet protections, then the service can be treated as broadband Internet access. Finally, CDT stressed that the status quo leaves Internet openness with no concrete protections, making FCC action essential.

Sincerely,

David M. Sohn  
Senior Policy Counsel

