

December 8, 2010

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

Re: Notice of Oral *Ex Parte* Communication
GN Docket No. 09-191, WC Docket No. 07-52

Dear Ms. Dortch:

On December 7, 2010, Harold Feld, Public Knowledge's Legal Director and I spoke via telephone with Zac Katz, Legal Advisor for Wireline Communications, International and Internet Issues for Chairman Genachowski. This notice is submitted in compliance with Section 1.1206(b) of the Commission's Rules.

We first raised the issue of usage based pricing, and recommended that the Commission make clear in its order that such pricing can be discriminatory and therefore unlawful if those caps create artificial scarcity in a way that is anticompetitive and/or intended to discriminate against high bandwidth applications.

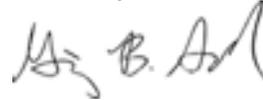
Second, we discussed the importance of an expedited mechanism for resolving open Internet complaints. We suggested that the "Outline of a Complaint Process for Violations of Net Neutrality" found in Appendix B of the January 14, 2010 comments filed by Public Knowledge and other public interest groups would be a good model for an expedited complaint process. In the alternative, the FCC could look to the expedited process for resolving complaints found in Section 208 of the Communications Act.

Third, we urged that the definition of broadband Internet access service be amended to ensure that carriers cannot sell the public a broadband Internet access service that serves less than "substantially all endpoints" and thereby evade the open Internet requirements. We used as an example a service that would provide a subscriber access only to the top 20 websites. The Commission could resolve this problem by adopting the definitions of broadband Internet access and broadband Internet access services in its Notice of Proposed Rulemaking in the above dockets, or it could simply delete the words "all or substantially all" from the definition in the Waxman legislative framework that is the basis for the FCC's definition.

Finally, we discussed the importance of language strongly disfavoring paid prioritization over the open Internet. At a minimum, such prioritization must be presumptively unlawful. Paid prioritization is inherently discriminatory and undercuts the values that open Internet rules seek to promote – innovation, creativity, free speech and economic growth. Public Knowledge is particularly concerned about paid prioritization because there is no mechanism to ensure that it is applied in a non-discriminatory manner. Even in the context of regulated Title II service, the FCC has only allowed parties to pay for prioritization when there have been mechanisms in place

to ensure that such treatment is offered in a non-discriminatory fashion. Permitting paid prioritization would require the FCC to simply accept that broadband access providers are acting in good faith. Moreover, we emphasized that paid prioritization would exacerbate the digital divide between rich and poor. This is because content and applications providers desiring prioritization will be unlikely to pay for such a service in economically disadvantaged areas, which in turn will result in those areas receiving slower service at the same price.

Sincerely,

A handwritten signature in black ink, appearing to read "Gigi B. Sohn". The signature is fluid and cursive, with the first name "Gigi" being the most prominent.

Gigi B. Sohn
President

cc. Zac Katz