

December 10, 2010

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

RE: Notice of Oral *Ex Parte* Presentation
WC Docket No. 07-52
GN Docket No. 09-191
GN Docket 10-127

Dear Ms. Dortch:

This letter is submitted pursuant to Section 1.1206(b) of the Commission's rules.

This letter is to provide information relating to discussions between the following individuals and members of the Commission's staff on December 9, 2010.

Present at the meeting were Jeffrey Blum, Dish Network; Parul Desai, Consumers Union; Michael Drobac, Netflix; Harold Feld, Public Knowledge; Michael Forscey, Writers Guild West; Joel Kelsey, Free Press; Sascha Meinrath, New America Foundation; Emmett O'Keefe, Amazon.com; Staci Pies, Skype; Andrew Jay Schwartzman, Media Access Project; Gigi Sohn, Public Knowledge; Aparna Sridhar, Free Press; and Commissioner Michael Copps, Chief of Staff and Policy Advisor John Giusti and Policy Advisor Margaret McCarthy.

At the outset of the meeting, the participants expressed their unanimous unwillingness to support the proposed open Internet framework in its present form as they understand it. The group also stated its collective view that any rules adopted exclusively on the basis of Title I jurisdiction are much more likely to face rejection upon judicial review. The participants argued that the Commission should, at the least, employ Title II as a basis of its jurisdiction.

During the meeting, the participants discussed the inadequacies of adopting, without major modification, the legislative compromise that had been proposed by Chairman Henry Waxman. As an initial matter, many of the companies and organizations in the meeting opposed the Waxman proposal as inadequate to protect consumers, competition, and innovation. But even more importantly, even those organizations represented in the meeting that had supported Chairman Waxman's proposal had done so as legislative measure. Unlike legislation, they said, agency rules can only be adopted based on the rulemaking record, and that the record developed at the FCC does not support adoption of Chairman Waxman's framework. It was noted in particular that the Waxman proposal was a temporary measure, premised on the understanding that the FCC would address details and ambiguities when it implemented the law, and that the Waxman proposal was meant as a floor, not a ceiling. Even supporters of the overall framework in the Waxman proposal at the meeting believe that the proposed implementation of the framework in the current rules incorporates numerous

loopholes and exceptions that effectively vitiate the underlying framework and render it wholly inadequate.

The participants spoke about the economic benefits of an open network. They discussed the fact that innovation takes place at the edge, and argued that the investment community will welcome the certainty that comes with effective rules that are not subject to repeated judicial attack.

With respect to the details of the proposed regulations, the participants expressed strong support for use of the same framework for both wireless and wireline services. They stressed in particular that a wireless regime that merely prohibits blocking of websites is especially incomplete inasmuch as the future of wireless innovation is based more and more on applications, including cloud-based applications, that are not web-based.

The participants also discussed the importance of rejecting paid prioritization. Absent that, ISP's will be in a position to exploit their dominant position and favor their own content and services, or those of select paying partners. Thus, paid prioritization must be identified as an unjust and unreasonable form of discrimination.

The group also discussed the importance of a strong definition of broadband Internet access service. The proposed definition provides numerous loopholes and means for carriers to circumvent the proposed rules, and was one of the key reasons why some of those represented at the meeting did not support the Waxman proposal. Even those groups that had supported Chairman Waxman's overall framework strongly disagreed with the definition. Parties also noted that the record contained no evidence or reasoned explanation supporting the change in definition from the definition initially proposed by the Commission.

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

Respectfully submitted,

/s/

Harold Feld
Legal Director
Public Knowledge

/s/

Andrew Jay Schwartzman
Senior Vice President and Policy Director
Media Access Project

cc: Commissioner Michael Copps
John Giusti
Margaret McCarthy