

February 1, 2011

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



Re: *Ex Parte* Presentation  
WC Docket No. 10-90 (Connect America Fund)  
WT Docket No. 10-208 (Mobility Fund)  
GN Docket 09-51 (National Broadband Plan)  
WC Docket No. 05-337 (High-Cost Universal Service Support)  
WC Docket No. 03-109 (Lifeline and Link Up)

Dear Ms. Dortch:

Media Access Project (“MAP”) respectfully submits, pursuant to Section 1.1206(b) of the Commission’s rules, 47 C.F.R. § 1.1206(b), the following *ex parte* presentation regarding matters to be addressed in the above-captioned dockets, and more specifically, matters to be taken up in the item that the Commission is scheduled to consider at its upcoming Open Meeting.

In brief, MAP strongly supports the inclusion in that item of a proposed rule that would require Eligible Telecommunications Carriers (“ETCs”) and any other service providers receiving universal service fund (“USF”) deployment support to comply with any “Open Internet” rules that the Commission may adopt. Such obligations should require at minimum that USF recipients comply with the rules adopted in the Commission’s recently adopted *Report and Order* in GN Docket 09-191, and any successor rules thereto. See *In the Matter of Preserving the Open Internet; Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, *Report and Order*, FCC 10-201 (rel. Dec. 23, 2010) (“*Open Internet Order*”).

A full discussion of the basis for making such a requirement applicable to providers that receive USF monies is beyond the scope of this brief presentation. MAP looks forward to working with interested parties, and commenting on this issue to develop the record on these matters, in response to any notice of proposed rulemaking or other inquiry adopted in the above-captioned dockets. To present the opportunity for MAP and others to submit comments on this topic, however, the Commission should ensure that the issue is squarely presented and noticed in the item it intends to consider at the next Open Meeting.

At present, MAP would call the Commission’s attention to earlier submissions, in certain of the above-captioned dockets, explaining the propriety of considering and adopting such openness requirements for recipients of federal USF support. For example, in *ex parte* presentations made during 2010 to Chairman Genachowski’s advisors and to Wireline Competition Bureau staff, Public Knowledge suggested placing such obligations on USF recipients to achieve more readily the goals of Section 254 of the Communications Act. See, e.g., Letter to Marlene Dortch, Secretary, Federal Communications Commission, from Harold

Feld, Legal Director, Public Knowledge, WC Docket No. 10-90 *et al.* (filed Aug. 27, 2010). In its various submissions, Public Knowledge explained that the Commission clearly has authority to adopt requirements applicable to recipients of government subsidies, and noted as well that such obligations would “flow...from the Commission’s ability to prioritize recipients of USF grants to ensure the specific goals of Section 254 and general goals of the Communications Act are met.” *Id.* at 2.

Thus, Public Knowledge suggested that the Commission at minimum consider adopting for USF recipients the same conditions placed on Broadband Technology Opportunities Program (“BTOP”) grantees by Section 6001(j) of the American Recovery and Reinvestment Act of 2009. *See id.* That section of the recovery act required NTIA, in administering BTOP grants, to “publish [ ] non-discrimination and network interconnection obligations that shall be contractual conditions of grants awarded” under the program, including among such obligations “at a minimum, adherence to the principles contained in the Commission’s broadband policy statement” upon which the *Open Internet Order* expands.

MAP concurs with the positions advanced by Public Knowledge, and specifically concurs with the idea that the imposition of Open Internet conditions on USF recipients will advance the goals of Section 254 of the Communications Act. That section directs the Commission to promote access to advanced telecommunications and other “quality services,” at just and reasonable rates, in all regions of the nation and for all “low-income consumers.” *See* 47 U.S.C. § 254(b)(1)-(3). As MAP and others have argued in other proceedings, openness requirements for broadband Internet access service providers promote deployment and competition by providing incentives for buildout rather than for the creation and maintenance of artificial scarcity and capacity constraints. *See, e.g.,* Comments of Public Interest Commenters, GN Docket 09-191, WC Docket No. 07-52, at 29-30 (filed Jan. 14, 2010) (“[R]ather than reinvesting in additional deployment to putatively less-profitable service territories such as low-income and rural communities, ISPs governed by no buildout requirements might simply pocket the additional (and likely supracompetitive) profits that might be derived from discrimination and prioritization.”); *see also* comments of Free Press, GN Docket 09-191, WC Docket No. 07-52, at 10 (filed Jan. 14, 2010). The Commission itself recognized in the *Open Internet Order* the deployment incentives that openness requirements create and preserve. *See, e.g., Open Internet Order* ¶¶ 29, 40 & nn. 130-131 (citing comments submitted by CCIA, Clearwire, Free Press, Google, XO, CDT, and Sony, among others).

Companies and public interest organizations alike have suggested that the Commission adopt such openness requirements for USF recipients, for the reasons explained above and for others as well. For instance, Windstream argued persuasively in recent submissions that the Commission should impose the same Open Internet requirements on all service provider recipients of USF deployment support to prevent regulatory arbitrage and unfair competitive advantages. As Windstream asserted, the forthcoming USF notice of proposed rulemaking “should tentatively conclude that [ ] performance requirements should be the same for all wireless and wireline providers” because “[w]ith funding limited to one provider per high-cost

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area, it would make little sense to see one set of standards for consumers in one community, and a separate set of standards in a nearby community that has a different provider.” *See* Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Malena F. Barzilai, Windstream Communications, Inc., WC Docket No. 10-90 *et al.*, Attachment (filed Jan. 28, 2011).

For the positive effects stemming from the imposition of basic Open Internet requirements on network operators receiving USF support, as well as the technological and competitive neutrality reasons outlined by Windstream and others, the Commission should propose and set out for comment such rules in the item under consideration in the above-captioned dockets.

Respectfully submitted,

/s/ Matthew F. Wood

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