

July 16, 2012

Via Electronic Filing

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

Re: Notice of Oral *Ex Parte* Communications, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36

On July 12, 2012, the following representatives of Measurement Lab (M-Lab): Thomas Gideon, M-Lab/New America Foundation's Open Technology Institute; Meredith Whittaker, M-Lab/Google; Benjamin Lennett, New America Foundation's Open Technology Institute; and Aparna Sridhar, Google, met with Commissioner Jessica Rosenworcel and Priscilla Delgado Argeris, Legal Advisor to Commissioner Rosenworcel, to discuss the FCC's broadband measurement program.

We discussed M-Lab's concerns regarding the Commission's broadband measurement program, currently managed by the Office of Engineering and Technology. The program collects data on broadband performance and uses these data as the basis for published reports documenting the state of wireline broadband in the United States. The first publication of the program, "Measuring Broadband America" report was released August, 2011 and work is ongoing for two new reports in 2012. Thus far the program has been unique in its commitment to open data and scientific-based methodology and analysis as core governing principles.

M-Lab is a research consortium, founded by Vint Cerf and Sascha Meinrath of the New America Foundation's Open Technology Institute, with the participation of a large body of academic researchers. M-Lab was founded to provide open data on broadband performance to researchers and consumers. To do this, M-Lab provides a distributed server platform on which broadband measurement tests are run, including those that underlie the Commission's reports. In exchange for free access to a consistent, centrally managed server platform, M-Lab's acceptable use policy requires that all tools running on the platform be open source (allowing methodological verification), and that all data collected on the platform be made publicly available. M-Lab's policy has formed the cornerstone of the broadband measurement program's commitment to transparency.

During the meeting, representatives of M-Lab expressed concerns at the measurement program's increasing shift away from its commitment to openness and transparency. We expressed particular concern with a proposal to replace the open, independent M-Lab server platform with closed, measurement servers operated and owned by the Internet service providers (ISPs) participating in the program. M-Lab has consistently invited ISPs to participate in the M-Lab consortium and donate servers to the platform that could then be run and managed in an open, accountable manner, thereby expanding the reach of the broadband measurement program.

To date, no ISP has responded to this offer.

The proposed change would replace the independent, consistent, and openly managed M-Lab platform -- the current guarantor of open data and transparency -- with a closed platform run by ISPs that prevents researchers and the public from verifying the results. This move would have a negative impact on the credibility of the measurement and call into question the program's commitment to openness and transparency. It would also have negative consequences for the research community, which has embraced the analysis and use of the open data collected by the program on the M-Lab infrastructure.

M-Lab representatives lastly acknowledged the Commission's measurement program is one of the first to make clear strides toward scientific credibility and openness as well as foster collaboration between the academic research community, regulators and industry. M-Lab is strongly opposed to any move that would roll back these broadly beneficial tenets on which the broadband measurement program was founded.

Respectfully submitted,
/s/

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