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May 5, 2014

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
VIA ELECTRONIC FILING

Notice of *Ex Parte* Presentation in GN Docket 14-28, GN Docket 10-127, and GN Docket 09-191

Dear Ms. Dortch:

On May 5, 2014, David Sohn and Andrew McDiarmid of the Center for Democracy & Technology (CDT) met with Rebekah Goodheart, Legal Advisor for Commissioner Clyburn. We discussed CDT's general support for FCC action to preserve the open Internet and our views on the forthcoming notice of proposed rulemaking relating to the above-captioned dockets.

We discussed CDT's skepticism that the proposed approach under section-706 authority would lead to effective and legally stable protection for Internet openness. We are particularly concerned that the paid prioritization of Internet traffic by Internet access providers, a practice generally prohibited under the prior rules, would be permitted under the proposed "commercially reasonable" standard. In addition, we discussed CDT's view that rules established under section 706 may prove difficult to administer and enforce. There would little certainty concerning what practices are impermissible; it could be impracticably burdensome for edge service providers to pursue complaints if the default rule is that discrimination is permissible; and FCC enforcement actions would be vulnerable to lawsuits arguing that even if the rules are not facially unlawful, the FCC is applying them in an unlawful manner.

Accordingly, we expressed our view that proceeding instead under the Commission's Title II authority would be a preferable approach, and urged that the NPRM include substantial questions in that regard, including questions about today's petition from Mozilla for a declaratory ruling as one option for such an approach.

We also suggested that the NPRM propose to subject both wireless and wireline Internet access service providers to the same rules; that the Commission expressly state that it does not believe its jurisdiction extends to over-the-top content and services; and that the Commission make it clear in any rules adopted under section 706 that the fact that of any particular practice not being covered should not be read as a tacit endorsement, and that such rules do not preclude additional future action under separate authority.



Lastly, we discussed the impact that peering and interconnection agreements between Internet networks can have on consumers and Internet openness. CDT believes this is an issue that increasingly merits the Commission's attention, whether as a part of this proceeding or as a separate inquiry.

This letter is being filed electronically, and a copy is being sent to Ms. Goodheart.

Respectfully submitted,

/s/ David Sohn

David Sohn
General Counsel