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CENTER FOR DEMOCRACY
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May 6, 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 6, 2014, David Sohn and Andrew McDiarmid of the Center for Democracy & Technology (CDT) met with Priscilla Delgado Argeris, Legal Advisor for Commissioner Rosenworcel. 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, generally 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, possibly including questions on the approach suggested by Mozilla in its recent petition for a declaratory ruling. We noted that even if the Commission chooses to pursue Internet openness rules based on section 706 authority, the agency should concurrently engage in active consideration of how Title II may apply to broadband networks, because developing an appropriate understanding of the reach of Title II is important not just to open Internet rules, but more broadly to the future role of the Commission in an all-IP environment.



With respect to the NPRM itself, we suggested that the Commission should propose to subject both wireless and wireline Internet access service providers to the same rules; should expressly state that it does not believe its jurisdiction extends to over-the-top content and services; and should indicate that it does not mean to tacitly endorse practices that fall outside the scope of any rules it may adopt under section 706 and indeed could take additional future action under separate authority to curb practices that may reduce Internet openness.

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

Respectfully submitted,

/s/ David Sohn

David Sohn
General Counsel