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May 7, 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 7, 2014, Nuala O'Connor, David Sohn, and Andrew McDiarmid of the Center for Democracy & Technology (CDT) met with Jonathan Sallet, Acting General Counsel, and Gigi Sohn, Special Counsel for External Affairs, to discuss our views regarding FCC action to preserve the open Internet and the forthcoming notice of proposed rulemaking relating to the above-captioned dockets.

We explained that CDT is skeptical that the proposed approach under section-706 authority would lead to effective and legally stable protection for Internet openness. We believe that, despite supportive language in *Verizon v. FCC*, rules taking such an approach could still face possible legal challenges both on their face and as applied in particular cases. In addition, we discussed CDT's view that rules established under section 706 may prove difficult to administer and enforce, because it could be impracticably burdensome for edge service providers to pursue complaints if the default rule is that discrimination is permissible. We also noted that it would be a significant challenge to define what it would mean to require a "baseline" level of service, as reports indicate the NPRM may propose.

Accordingly, we expressed our view that proceeding instead under the Commission's Title II authority would be a preferable approach. 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. With respect to the NPRM itself, we suggested that questions about Title II should include an inquiry into the approach suggested by Mozilla in its recent petition for a declaratory ruling; that the Commission should propose to subject both wireless and wireline Internet access service providers to the same rules; and that the Commission should expressly state that it does not believe its jurisdiction extends to over-the-top content and services. Finally, we suggested that the Commission state that rules based on 706 constitute an initial step intended to fill an immediate policy vacuum, and thus neither foreclose other legal approaches nor affirmatively endorse practices not covered by the rules.



This letter is being filed electronically, and a copy is being sent to Mr. Sallet and Ms. Sohn.

Respectfully submitted,

/s/ David Sohn

David Sohn
General Counsel