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July 28, 2010

Chairman Julius Genachowski
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Meredith Attwell Baker
Commissioner Mignon Clyburn
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Re: *Notice of Ex Parte Presentation*: GN Docket No. 09-191 (Preserving the Open Internet); WC Docket No. 07-52 (Broadband Industry Practices)

Dear Chairman Genachowski and Commissioners:

Recently, the FCC has been urged to adopt a version of its fifth proposed net neutrality rule that would prevent businesses—including minority and disadvantaged businesses—from entering into voluntary agreements with broadband providers.¹ This would be a serious mistake and represent a significant step backward for consumers and for the many minority and women business enterprises (“MWBs”) and socially and economically disadvantaged businesses (“SDBs”) whose interests we represent.

As the record in this proceeding shows,² it is simply wrong to conclude that these agreements harm consumers. First, broadband providers have been offering these enhanced capabilities pursuant

¹ See Letter from Aparna Sridhar, Policy Counsel, Free Press to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-191; WC Docket No. 07-52 (July 21, 2010) (contending that voluntary agreements “fundamentally harm[] consumers”); see also Letter from Corie Wright, Policy Counsel, Free Press to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-191; WC Docket No. 07-52 (July 22, 2010).

² See, e.g., Reply Comments of the National Organizations at 8-11, *Preserving the Open Internet*, GN Docket No. 09-191 (Apr. 26, 2010) (“National Organizations’ Reply Comments”); Comments of the Communications Workers of America at 16, *Preserving the Open Internet*, GN Docket No. 09-191 (Jan. 14, 2010) (“CWA Comments”) (discussing the benefits that quality of service agreements bring to small and new-entrants); see also Reply Comments of the League of United Latin American Citizens at 1, *Preserving the Open Internet*, GN Docket No. 09-191 (Apr. 26, 2010) (expressing concern that prohibiting “Quality of Service enhancements . . . would impinge on specific internet applications that require heightened security measures and reasonable network management”); see also Reply Comments of the Communications Workers of America at 5, *Preserving the Open Internet*, GN Docket No. 09-191 (Apr. 26, 2010) (“CWA Reply Comments”).

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to voluntary private agreements for quite some time. MWBEs and SDBs are presently benefiting from these capabilities, which enable them to obtain high-quality broadband services that satisfy their communications needs. Second, these agreements have not been shown to harm consumers, other businesses, or any other entity. In short, banning these agreements would only serve to harm the businesses that benefit from them while serving no legitimate public policy purpose.

Voluntary Agreements Are Beneficial to Disadvantaged Businesses

Today, when MWBEs and SDBs sign up for Internet access service, many of these businesses also enter into voluntary agreements with their broadband providers for the provision of enhanced quality of service (“QoS”) capabilities as part of their Internet access service as well as other specialized offerings. These agreements allow MWBE and SDBs to identify a portion of their traffic as requiring better than “best-effort” handling. This capability allows these businesses to ensure that the performance-sensitive applications that they wish to run, such as VoIP or IP-based video conferencing, receive the service quality needed to function properly. These capabilities may also allow them to offer higher-quality, more compelling applications and content to end users.

Large Internet-based companies do not need the option of entering into these private agreements. Companies like Amazon, eBay, Yahoo, MSN, and Google have invested substantial resources in deploying their own content delivery networks (“CDNs”), server farms, and other infrastructure to speed the delivery of their content and applications to end-users.³ This infrastructure essentially creates a private Internet because it allows these established companies to bypass the traditional Internet backbone networks that other companies use. This private infrastructure allows these large companies to offer their customers faster and more reliable access to their services, content, and applications. At the same time, these private networks require enormous sums of capital to build and thus can only be self-provisioned by the largest incumbent Internet-based companies.

To compete with these incumbents, MWBEs and SDBs need access to CDNs and other network services that will allow them to provide their customers with the same fast and reliable offerings as their established competitors. If MWBEs and SDBS do not have affordable access to these types of services, then they have little chance of gaining any market share. For example, in our net neutrality Reply Comments, we explained the importance of voluntary agreements to a minority-owned business that is attempting to launch a service that provides consumers with online access to streaming videos that are designed to appeal to a minority audience.⁴ She must

³ See National Organizations’ Reply Comments at 9.

⁴ See *id.* at 10-11.

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have the ability to offer her consumers the same high-quality access to videos as her larger competitors (such as YouTube) can offer. If the business owner can work with her broadband provider to pre-position her content geographically close to her customers, this would allow her to reduce the distance and number of routers her latency-sensitive packets of data must travel and would cut down on the likelihood that network congestion or other problems would degrade the quality of her video offering.⁵ Likewise, if she can obtain a broadband Internet access connection with enhanced QoS, she can use that enhanced QoS to deliver higher quality services to her customers, which better enables her to compete against incumbent content providers.

Indeed, as the Communications Workers of American stated in this proceeding, “[a]bsent the ability to purchase content delivery network services and QoS offerings from a broadband Internet access provider, new, small-entrant content, application, or service providers could not enter and compete against large content, application, or service providers.”⁶

Currently, MWBEs and SDBs are teaming up with their broadband providers for route optimization services, CDNs, and other enhanced offerings that allow these businesses to provide their content, applications, and online services in a manner that is comparable to their established competition. By preventing these voluntary agreements, the Commission would effectively insulate established Internet-based companies from competition and allow for the proliferation of two Internets – one that well-funded, incumbent companies can use, and another for all other businesses. This would not be pro-consumer and it would certainly have a very un-neutral impact on MWBEs and SDBs.

Banning Voluntary Agreements Could Also Prevent New And Innovative Offerings From Reaching The Market

In addition to helping MWBEs and SDBs compete in the market for online services, voluntary agreements are allowing businesses to offer cutting edge and innovative online offerings that require specialized or enhanced handling. In many cases, these offerings can help drive broadband adoption and help us achieve the goals identified in the National Broadband Plan.

⁵ *See id.* at 10.

⁶ CWA Comments at 16; *see also* CWA Reply Comments at 5 (“[U]nless network providers are permitted to provide content delivery network (‘CDN’) services and similar Quality of Service (‘QoS’) offerings, smaller and new-entrant application providers would be unable to compete with application giants like Google that have their own comprehensive and distributed server and network facilities[.]”)

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For example, the National Broadband Plan recognizes that there are significant disparities in health care across ethnic groups and that there are specialized broadband-enabled health IT offerings that can play an important role in addressing this issue and in improving health care for minority groups.⁷ In addition, the Plan notes that there are emerging Smart Grid technologies that can help increase our nation's energy efficiency.⁸ Moreover, as noted above, MWBEs and SDBs are currently experimenting with a variety of online offerings, such as IP-based video, that are designed to appeal to minority audiences and can thus help spur broadband adoption and use.⁹

These are just a few examples of the types of pro-consumer broadband offerings that require enhanced or specialized treatment for the offerings to function properly. There are many others that are widely available today and are being used by a variety of organizations and businesses. Indeed, as the Communications Workers of America have noted, banning voluntary agreements would prevent "network providers from offering the specialized QoS and prioritization necessary for telemedicine, public safety, two-way real-time distance learning, and other services that benefit the public."¹⁰

We urge the Commission to remain mindful of the important, pro-consumer role voluntary agreements are playing. These agreements are not harmful and should not be banned. Rather, they are allowing new entrants and small businesses to compete on a more level playing field with their established competitors and they have allowed many new and innovative offerings to reach the marketplace. At bottom, these agreements are in the public interest, and we could not support any net neutrality rule that bans them.

A copy of this letter is being filed electronically in the above-referenced dockets in compliance with Section 1.1206(b) of the Commission's rules.

⁷ See FCC, *Connecting America: The National Broadband Plan* (rel. March 17, 2010) ("National Broadband Plan") at Chapter 10.

⁸ *Id.* at Chapter 12.

⁹ See Joint Center for Political and Economic Studies, *National Minority Broadband Adoption: Comparative Trends In Adoption, Acceptance And Use* (Feb. 2010) at 20, 29, 30-33 (discussing how the availability of relevant online content and applications can drive up broadband adoption rates among minority groups).

¹⁰ CWA Reply Comments at 5.

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Respectfully submitted,



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National Coalition of Puerto Rican Women
National Conference of Black Mayors
The National Coalition on Black Civic Participation-Black Women's Roundtable
National Organization of Black Elected Legislative Women
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