Chairman Julius Genachowski
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

November 9, 2009

RE: Docket Nos. 07-52, 09-191

Dear Chairman Genachowski,

We write today to request clarification regarding recent statements made by a senior Commission official at a public event in California, as reported in the issue of *Communications Daily* dated November 6, 2009. According to this press coverage of the event, the official stated that giving high priority treatment in a network to voice and video traffic is a reasonable network practice. It appears from this single press account that the official had concluded that voice and video "have special requirements" and that prioritization of such traffic is reasonable network management. The same report also cites the official as saying that the Commission will be focusing on "different treatment of comparable applications," a policy that would not seem to prohibit either deliberate prioritization or degradation of any broad class or category of applications.

We understand that such press reports can, at times, report statements out of context, or even unintentionally mischaracterize the substance or the nature of the speaker's words. That said, we write because the statements attributed to Commission staff are surprising, insofar as any resolution of these issues must be based on answers to several questions raised in the Commission's recent Notice of Proposed Rulemaking on Preserving the Open Internet.

Specifically, paragraph 113 of the Notice asks whether "services such as VoIP, video conferencing, IP video, or telemedicine applications depend on discrimination." The same paragraph asks parties to "identify specifically the content, applications, and services" that require "enhanced" treatment. Similarly, in paragraph 137, the Commission notes some parties have suggested that "it would be beneficial" to prioritize VoIP, gaming, and streaming media traffic, and seeks comment on whether this approach is reasonable. Additionally, paragraph 141 of the Notice seeks comment on wording of the definition of reasonable network management, and on how to evaluate particular practices. Also, in your speech at the Brookings Institution, you stated that the nondiscrimination principle means that network operators "cannot block or degrade lawful traffic over their networks, or pick winners by favoring some content or applications over others in the connection to subscribers' homes."

Although the Notice raised these questions, the press report did not indicate that the prioritization of such traffic may or may not be found reasonable under certain circumstances on the basis of the full and transparent record to be developed here. And, although your speech established that nondiscrimination is intended to prevent network operators from preferring some applications over others, the press report sent signals to the contrary. We write for clarification of our understanding that the Commission, during the course of this proceeding, will make all such determinations based on an analysis of comments and data yet to be submitted by the public on these crucial issues, before reaching any conclusion regarding the need for special treatment for certain classes of traffic.

Sincerely,

Ben Scott
Chris Riley
Free Press

Andrew Jay Schwartzman
Media Access Project

Joel Kelsey
Consumers Union

Michael Calabrese
New America Foundation

Robb Topolski
Sascha Meinrath
Open Technologies Initiative
New America Foundation