



INDIANA UNIVERSITY

DEPARTMENT OF TELECOMMUNICATIONS

College of Arts and Sciences
Bloomington

March 2, 2010

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

**Re: Notice of Ex Parte Communication
GN Docket No. 09-191; WC Docket No. 07-52**

Dear Ms. Dortch,

On February 26, 2010, Prof. David Waterman, Dept. of Telecommunications, Indiana University at Bloomington, met with Mark Bykowsky, Office of Strategic Planning and Policy Analysis; Sharon Gillett, Wireline Competition Bureau; Zachary Katz, Office of Strategic Planning and Policy Analysis; and David Tannenbaum, Office of General Counsel, following a seminar presented by Prof. Waterman at the Commission on Feb 25.

This letter summarizes points made to FCC staff at the Feb. 26 meeting that are in addition to those made in a set of Powerpoint slides which were presented on Feb. 25 and are attached to this letter.

The objectives of the Open Internet rules are a good idea overall, but it will be difficult to frame the rules because it is difficult to predict how the ISP or the IP content market will develop. It is thus important that the Commission carefully think through possible scenarios of market developments and industry responses to the rules.

As discussed on Feb. 25, a non-discrimination access rule by itself can shift similar discrimination activity upstream to the content service market level or downstream to the consumer market level. In general, this occurs because if a

group of firms has several alternative routes to pursue a given objective, and one of those routes is restrained by a rule, those firms will more frequently choose one of the alternative routes. The particular effects of a rule on discrimination activity will vary by situation. Even though discrimination is likely to grow in other parts of the market, a non-discrimination access rule is likely to reduce discrimination behavior overall.

Consumers' perception of whether a non-discrimination rule is fair is important.

The ISP discrimination issue is more appropriately framed as a terminating monopoly problem than a question of how to balance the bargaining power of content providers and ISPs. The former is the more fundamental economic issue, although the cable industry experience shows that the latter is important to predicting a rule's possible effects on entry and innovation in program content.

The Feb. 25 presentation focused only on the programming industry. But a lot of the same ideas transfer to Voice over IP (VoIP) and other services ISPs may provide. On the other hand, the more extreme economies of scale in programming distinguish it from other products.

The program access rules in cable have apparently worked well, and it may be worth considering analogous rules in the Internet context. Such rules would require that prices charged by ISPs to content holders (and vice versa) have to be uniform. That kind of rule would be directed at precluding tacit exclusivity arrangements and ideally should apply to all programming content, not just vertically integrated content.

Sincerely,

David Waterman
Professor

Attachment: The Experience of Vertical Control in Cable Television: Implications for Network Neutrality (Powerpoint presentation)

