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

RE: WC Docket No. 07-52

Dear Ms. Dortch:

We congratulate the Federal Communications Commission on its recent order concerning Comcast's interference with peer-to-peer applications. The Commission's action is a significant first step in developing a sound competition policy, promoting diverse forms of innovation that will benefit consumers, and protecting freedom of speech. While we believe additional future action will be necessary to secure these values and promote a truly open Internet, we think all Americans should applaud the Commission's vision and courage in helping to ensure consumers unimpeded access to lawful Internet content and applications.

In 2005, the FCC unanimously issued a policy statement that announced the Commission's intention to protect consumers' rights to an open Internet. That statement's four principles gave consumers the right to access the lawful content, applications, and attached devices of the consumers' choice, with the benefit of fair competition in all these areas. Recognizing that the market for Internet access remains uncompetitive (it is generally controlled by the local phone and cable monopolies), the FCC made a commitment to protect open competition in Internet content and application markets.

In November 2007, the FCC faced a key test of that commitment. Comcast had secretly blocked and degraded peer-to-peer technologies in violation of consumers' rights. Leading consumer groups, law professors (including us), and over 20,000 Americans asked the FCC to declare Comcast's practices illegal.

Chairman Kevin Martin and the FCC investigated by taking comment, expert testimony in public hearings, and testimony from the general public. Following this investigation, the FCC agreed with the weight of the expert and consumer testimony and declared that blocking or impeding specific traffic does not constitute "reasonable network management." The Commission concluded that preserving an open Internet promotes several goals of the Communications Act, including fostering universal connectivity to *two-way* communications networks, maximizing users' access to the information of their choice, and preserving a competitive free market on the Internet. Although it has not (regrettably) issued an immediate injunction or fine, the FCC has

nevertheless put network providers on notice that such conduct will subject them to fines and injunctions.

We salute the Chairman and Commissioners Michael Copps and Jonathan Adelstein for heeding the evidence before them and having the political courage to stand up for Americans' right to an open Internet in the face of considerable pressure from industry lobbyists. The Commission has both the authority and the duty to protect consumers from attempts to limit their access to applications and content. When Congress created the FCC it sought to establish a single agency with expansive authority to enforce the Communications Act and regulate telecommunications facilities in the public interest. Title I of that Act grants the FCC general jurisdiction over communication by wire or radio, including Internet access. (In addition, the FCC could also, if it chose, reclassify Comcast's broadband offering as including a Title II telecommunications service.) However the jurisdictional question is posed, there is little doubt that protecting freedom of speech and online user choice is central to the FCC's mission to further the goals of the Communications Act.

This order sends an important signal. Managing congestion will be an ongoing problem for network providers. If network providers can arbitrarily single out specific applications to manage congestion on their networks, the Internet Policy Statement would become meaningless. The decision makes clear that "reasonable network management" is not the backdoor that enables network providers to undermine the non-discriminatory nature of the Internet that the Internet Policy Statement is designed to protect.

By securing end users' unimpeded access to applications and content, the FCC's order protects fair competition and economic innovation. It preserves the Internet's decentralized structure, which has permitted the Internet to tap the genius of people around the world and create new content and powerful new applications that few could have dreamed of. The Internet is a fundamental social infrastructure that has given birth to unpredictable, powerful, even radical innovation because no start-up needs permission from a cable or phone company bureaucrat to reach consumers. Unimpeded access fosters a democratic culture of speech, association and creativity. It promotes a level playing field for new businesses who can compete with incumbents to provide new services and content. Finally, unimpeded access to the Internet promotes a democratic and decentralized media environment, in which the network's users decide how to innovate and communicate, free from centralized control.

The FCC's order is not perfect in all respects, but it is the beginning of a sound public policy for the digital age. It is welcome news for consumers, innovators, citizens, and everyone who has come to rely on unimpeded access to the content and applications available on an open Internet. We commend the Commission for taking this important first step.

Sincerely,

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