

January 14, 2010

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

**Re: Google and Verizon Joint Submission on the Open Internet
GN Docket No. 09-191; WC Docket No. 07-52**

Dear Chairman Genachowski and Commissioners Copps, McDowell, Clyburn and Baker:

On October 21, 2009, Verizon and Google shared our preliminary thinking on how we might find common ground with respect to an open Internet, the central issue in the current debate about network neutrality. We committed to engage on important policy issues that underlie the debate and suggested that, because our businesses rely on each other, it is appropriate for us to jointly discuss a number of things: how we ensure that consumers get the information, products and services they want online; encourage investment in advanced networks; and ensure the openness of the web around the world. Today, each of us has filed separately in this docket on our individual views of the statutory authority and empirical basis for the FCC to take specific actions as noticed in its proposed rulemaking. We continue to disagree on some of these matters. We each stand by our individual positions in our separate filings, and nothing in this filing waives those positions.

We do agree, however, on a number of important matters that are crucial to the formulation of an enlightened, sustainable Internet policy for the United States. We believe that we need a policy that will ensure openness and preserve the essential character of the Internet as a global, interconnected network of networks and users that is thriving based on a common set of core values.

Below we have laid out several overarching values that create a framework to guide players throughout the Internet space – including communications networks, providers of applications, content, and devices, and the full panoply of Internet users – and policymakers as they consider certain issues regarding all elements of the Internet ecosystem. These values, as discussed below, while operating in a largely decentralized environment, drive a self-directed ecosystem that continues to innovate and invest without unnecessarily restrictive government intervention. At bottom these values should help ensure that the Internet continues to grow and succeed with minimal interference from the government, while acknowledging the role for appropriate oversight (and enforcement) over practices on the Internet where market forces, self-governance, and existing federal and state statutes and regulations are inadequate to protect

competition and consumers. In particular, consumers should continue to have access to the information, products, and services of their choice online; to encourage investment in robust, advanced networks; and to protect and promote Internet openness.

A. Google and Verizon agree that the Internet is a unique, worldwide network of networks that was created, operates and will continue to thrive based on a common set of overarching values that are embraced by all players in the eco-system to support continuing innovation and investment.

From the beginning, the Internet has thrived in an environment of minimal regulation. Various entities throughout the Internet space – whether providers or users of network services, applications, content, devices, or a combination – have worked together cooperatively to make the Internet what it is, to address legitimate challenges as they arise, and to meet users’ evolving needs and expectations. The Internet has flourished largely as a result of these cooperative efforts, backed more recently by significant levels of private investment and innovation.

While we do not agree on every issue, we do agree as a matter of policy that this framework of minimal government involvement should continue going forward. We also agree as a matter of policy that certain core values should continue to provide guidelines for the conduct of all players in the Internet.

1. Preserving Openness.

It is essential that the Internet remains an unrestricted and open platform, where people can access the lawful content, services, and applications of their choice. These are the core values underlying the FCC’s existing wireline principles, and all providers in the Internet ecosystem should act in accordance with these values. To us, this means that when a person accesses the Internet, he or she should be able to connect with any other person that he or she wants to -- and that other person should be able to receive his or her message. An open Internet also is one in which no central authority can impose rules that limit or prescribe the services that are being made available, where an entrepreneur with a big idea can launch his or her service online with a potential audience of billions, and where anyone, including network providers, are able to innovate without permission and provide any applications or services of their choosing, either on their own or in collaboration with others.

2. Encouraging Investment and Innovation in Broadband Networks.

The “innovation without permission” that has characterized the Internet has forever changed how people conduct business, promoting unprecedented levels of collaboration, creativity, and opportunity. We strongly believe that open, robust, and advanced broadband networks are essential to the future development of the Internet, and public policies should continue to provide appropriate incentives for commercial investment and innovation. We recognize the significance of continued, private investment and innovation to increase the capacity and intelligence of broadband infrastructure and achieve our Nation’s broadband potential. These networks will make the Internet more useful for consumers and will enable new and innovative applications and services that empower consumers, grow the economy, create

jobs, and address a wide range of additional national priorities from energy independence to improved health care. In short, continued private investment is essential to increase the reach and capabilities of advanced intelligent networks, which will in turn support the development of ever more sophisticated applications.

3. Providing Users with Control.

Consumers should continue to have control over all aspects of their Internet experience, from the networks and software they use, to the hardware they plug in to the Internet and the services they choose to access online. No entity from either the government or the private sector should wrest control from consumers over how they choose to use the Internet, and the government should not implement policies that would limit consumers' ability to choose for themselves.

4. Providing Users with Information.

Transparency will ensure an environment of informed user choice. Providers throughout the Internet space should give users clear and meaningful information concerning Internet services, applications and content to facilitate informed choices. Transparency could also benefit the Internet more generally, as network operators could improve their services as a result of increased visibility into the demands of new applications, and vice versa.

5. Maintaining Balanced Intellectual Property Policy.

We both recognize the importance of protecting intellectual property in the digital environment and each of us engages in efforts to assist content owners in enforcing their rights and deterring online copyright infringements. US copyright law affords not only protections to copyright owners but also important limitations, often grounded in the First Amendment, such as fair use and safe harbors for intermediaries. We agree that any policy governing the role of online intermediaries should continue to be governed by the carefully crafted compromise in the Digital Millennium Copyright Act ("DMCA"). Government agencies should be mindful to promote the full balance of US intellectual property laws, and avoid taking actions that usurp legislative or judicial determinations over the scope of copyright protection as technology evolves.

6. Keeping Internet Applications, Content, and Services Free from Communications Regulation.

Google and Verizon agree that communications laws and regulations should not apply to Internet applications, content, or services. Because communications regulatory bodies, such as the FCC, are agencies of limited jurisdiction, at a minimum they must have requisite jurisdiction before they can subject any Internet application, content, or service to regulation. There is also no sound reason to impose communications laws or regulations on the robust marketplace of Internet content, applications, and services. In the United States, competitive or consumer protection concerns about such offerings generally should be directed instead to government agencies of general jurisdiction, such as the U.S. Federal Trade Commission.

7. Providing a Leadership Role for Expert Technical Bodies.

Since its inception, the Internet has benefitted from the collaboration and cooperation of technical experts from all parts of the Internet ecosystem. For example, groups such as IETF have provided a forum for experts to discuss and address legitimate challenges as they arise, as well as practices that improve the working of the Internet and help to meet users' evolving needs and expectations. This model of self-governance and collaboration, with minimal government involvement, will continue to serve the Internet well into the future.

B. Google and Verizon agree that self-governance has been the hallmark of the growth and success of the Internet; where government intervention is needed to address harm to users or to competition, such intervention should be surgical, swift and based on a finding of specific facts that establish such harm.

Google and Verizon agree that the players in the Internet ecosystem should, in the first instance, set the norms of behavior and operation that preserve and protect the values articulated above. The success of the public Internet has been the direct result of the existing system of self-governance, with collaboration and engagement by parties throughout all parts of the Internet ecosystem and minimal governmental involvement. We further believe that the Internet community is highly motivated and well positioned to police itself, especially if all players are committed to transparency and inclusiveness. It should, therefore, strive to settle disputes and disagreements on technical issues in self-governing forums. Going forward, it remains critical to preserve this system of self-governance, with governmental involvement limited to dealing with bad actors on a case-by-case basis where industry mechanisms are unable to resolve conduct that is anticompetitive and harms consumers.

1. Technical Guidance and Dispute Resolution Framework

Google and Verizon would support the creation of a procedural framework that efficiently and effectively provides guidance to all stakeholders and to policymakers concerning practices on the Internet, including the consistency of practices with the values set out above. A robust role for technical and industry groups should be encouraged to address any challenges or problems that may arise and to help guide the practices of all players consistent with the values outlined above, with the backstop of federal government involvement on a case-by-case basis to address bad actors where this self-governance process and market forces prove inadequate. We would support a framework that ensures that:

- Incentives to innovate and invest continue to grow throughout the Internet ecosystem, and that current business models or technological approaches are not necessarily frozen in place.
- Consumers and technical experts drive the continued evolution of the Internet and broadband technology.
- Providers should have sufficient flexibility to manage their networks and structure their services to address evolving threats and better serve consumers.
- Regulatory uncertainty and the risk of harsh penalties do not chill innovation or prevent providers of from managing their networks or offering their services in reasonable ways.

a. Google and Verizon Support the Creation of One or More Technical Advisory Groups to Provide Guidance and Expedious Resolution of Disputes in the Internet Ecosystem.

We believe that guidance to industry players and policymakers should, in significant part, be supplied by one or more bodies of experts, referred to herein as technical advisory groups (“TAGs”). These TAGs would be comprised of a range of stakeholders with appropriate technical expertise, and would serve to provide useful and efficient guidance to all parties in the Internet ecosystem, as well as to facilitate speedy resolution of any issues or disputes that may arise concerning practices on the Internet. Specifically, we believe that these expert bodies should engage in several functions as described below.

b. Development of Best Practices.

The TAGs could develop appropriate best practices or principles that could address transparency, network management, or other related issues touching all parts of the Internet ecosystem. A practice that is consistent with these best practices or principles would be presumed to satisfy the values outlined above and any regulatory requirements. (The fact that a given practice differs from these best practices would not show the opposite, however, given the need for flexibility to address rapidly evolving threats and consumer needs). The TAGs should have flexibility to amend, adjust, eliminate, or supplement these best practices or principles over time in light of changes in marketplace, technological or other relevant circumstances.

c. Forum for Dispute Resolution.

The TAGs also could provide a forum for dispute resolution, which would facilitate speedy disposition of disputes in the first instance, as is done today in the advertising context. The goal of this process should be to seek an appropriate, mediated, and expeditious resolution of complaints that addresses any legitimate concerns, but that does not unnecessarily strain agency resources or otherwise lead to unintended consequences.

Complaints concerning members of the Internet industry (including network, application, content, and other online service providers) could be directed to an appropriate TAG for mediation, arbitration, or any other forms of dispute resolution agreeable to the parties to the complaint and the TAG. The appropriate dispute resolution mechanism should be selected or agreed upon by the parties shortly after the complaint is filed.

Once the parties have elected a method of alternative dispute resolution, the TAG should quickly establish a schedule and address any other procedural questions related to the handling of the complaint. The TAG must provide each party with an opportunity to present relevant evidence and to make any arguments concerning the reasonableness of its practices and the costs/benefits of alternative approaches. In considering a dispute, any complaint could be informed by Internet best practices or principles, which the TAG also could help to facilitate.

Unless the parties are able to reach a voluntary settlement, the TAG should issue an advisory opinion concerning the particular practices at issue at the conclusion of the dispute resolution process. This opinion should include findings of fact based on the evidence presented, analysis of any applicable industry best practices or principles, any other analysis relevant to the reasonableness of the practices at issue, and recommendations concerning the practices at issue.

d. Advisory Opinions.

The TAGs also could issue advisory opinions outside of the context of a specific complaint proceeding in order to minimize uncertainty concerning which network management practices or other practices are appropriate. These opinions, which could focus on particular practices, could be issued in response to a request by a consumer or consumer advocacy group; a provider; government agencies such as the FCC, FTC, or DOJ; or any other interested party.

e. Coordination with Standards-Setting Bodies.

The TAGs also could coordinate with industry standards-setting bodies to ensure that any principles, best practices, and decisions are informed by the continued work of such bodies.

2. Federal authorities should be able to address bad actors on a case-by-case basis where market forces and self-governance are inadequate. Parties always have the option to seek resolution of complaints by the appropriate federal agency of jurisdiction.

We also agree as a matter of policy that there should be some mechanism for federal authorities to address bad actors on a case-by-case basis when competition and self-regulatory efforts are unsuccessful in addressing conduct that is anticompetitive and harms consumers. While we may not necessarily agree on which federal agency does or should have authority over these matters, we do recognize as a policy matter that there should be some backstop role for federal authorities to prevent harm to competition and consumers if or when bad actors emerge anywhere in the Internet space, and we do agree that involvement should occur only where necessary on a case-by-case basis. As government officials consider Internet issues, they too should seek guidance – and place weight on – the best practices, opinions and actions of the TAGs.

Federal authorities should encourage (although certainly not require) complainants to pursue resolution of disputes before an expert body, such as the proposed TAGs, before seeking resolution by the agency. In the case of those complaints filed with or brought by the agency, the agency should employ a streamlined complaint process subject to fixed deadlines focused on determining whether the challenged practices comply with its rules.

All complaints must include a prima facie showing that one or more of any rules adopted by an agency have been violated. We believe that, in examining the complaint, the agency should afford considerable weight to the principles, best practices, and/or advisory opinions rendered by the TAGs. As noted above, practices that comply with the principles, best practices and/or advisory opinions of the TAGs could be presumed to comply with any network neutrality

rules (although the opposite is not necessarily true). If the agency determines that a prima facie showing has been made, it could consider need for a temporary restraining order directing the defendant to cease and desist from the activities alleged to violate any network neutrality rules for the duration of the complaint proceeding.

Each party to the case should be provided with an opportunity to present facts and legal or policy arguments. In those instances in which the parties first pursued dispute resolution before a TAG, the complaining party should state in its complaint all exceptions to the fact finding and other analysis contained in any advisory opinion, and support its exceptions with citations to record evidence and argumentation. Government authorities should be given discretion to determine the need for any additional fact finding, including where applicable the need for any initial or additional discovery not provided before the proposed TAG.

After considering evidence presented by the parties, any decision issued by an agency should include findings of fact concerning the underlying dispute and the parties' practices. The agency could provide due consideration to previous findings of fact from a TAG's advisory opinion, unless those findings are clearly erroneous. Any policy directives issued by a government agency in a particular dispute should be subject to an opportunity for public comment.

C. Verizon and Google agree on a number of policy goals advanced in the FCC's NPRM

1. The FCC's Wireline Broadband Principles have provided useful statements of general policy.

While Google and Verizon differ on the need for, and potential effects of, FCC rules, Google and Verizon agree that the Commission's existing wireline broadband principles provide useful statements of general policy. These principles make clear that consumers are, and should continue to have, the final say on their web experience. As Google and Verizon jointly noted previously, the minute that anyone, whether from the government or the private sector, starts to control how people access and use the Internet, it is the beginning of the end of the Net as we know it.

2. The Commission's NPRM correctly recognizes the role of network management in preserving a robust, open Internet.

We also continue to agree – as do virtually all parties – on the importance of network management. Network operators must have flexibility to manage their networks to deal with a range of network-impacting issues, including traffic congestion, spam, “malware” and denial of service attacks, as well as other network threats or challenges that may emerge in the future. Of course, operators' network management practices should be reasonable, consistent with their customers' preferences, and not unreasonably discriminate in ways that are anticompetitive or harm users.

3. The Commission similarly recognizes the potential value of allowing network providers to provide additional service options to consumers over their broadband infrastructure.

Google and Verizon acknowledge that broadband network providers, in addition to offering traditional Internet access services, should have the ability to offer consumers additional service options over their broadband facilities. Clearly, broadband infrastructure has multiple uses, and network operators should continue to have the ability to offer users the choice of service options in addition to traditional Internet access services. It is important that such services not reduce financial incentives for network operators to provide open and robust broadband capacity to support traditional Internet access to consumers. At the same time, we recognize that the ability to offer such services could expand the range of choices available to consumers, and help support investments in higher capacity, more advanced broadband networks – including, of course, capacity to benefit the traditional Internet access services offered over such networks.

4. The Commission rightly emphasizes the importance of transparency.

As noted above, we are committed to increasing transparency and providing consumers with meaningful information to allow informed consumer choice. Increased transparency protects consumers and decreases the chances of bad acts or harmful practices on the Internet.

5. The Commission is not an arbiter of US intellectual property laws.

Copyright is a delicate balance, carefully crafted by Congress and the courts. The FCC should not impose mandates in this area - whether mandates that require filtering, monitoring or other activities not included in the DMCA or mandates that would prohibit the development of future voluntary cooperative efforts to deter copyright infringement. Steering clear of such mandates helps ensure that consumers continue to be able to access lawful content, products and services while encouraging investment and openness in evolving applications and advanced networks.

D. Google and Verizon agree that the focus of any nondiscrimination rule should be to prevent harm to users or to competition

With respect to traditional Internet access services, the parties agree that differential treatment of Internet traffic by network operators may be either beneficial or harmful to users. Particular practices could be acceptable or unacceptable discrimination, depending on their effect on competition and on users. While we do not necessarily agree on which side of the line various practices may fall, we do agree that such practices should be evaluated on a case-by-case basis.

E. Google and Verizon agree that the FCC should examine specific market and technical factors before applying any general oversight or specific rules to wireless broadband networks.

As we previously indicated, Verizon and Google disagree about whether mobile networks should be part of this framework. Notwithstanding this difference, we agree that such networks hold tremendous promise for ubiquitous Internet access, and innovative new services for consumers nationwide. We also agree that wireless broadband raises a variety of unique technical and competitive circumstances, including the issues presented by mobility and the limitations inherent in the use of spectrum. Therefore, before the Commission considers applying general oversight or specific rules to wireless issues, the FCC should carefully analyze these issues and consider the following:

- The existing Internet Policy Statement arose from the deregulation of wireline broadband operators, and at the time did not take into account the unique technical and competitive circumstances of wireless broadband services.
- Any oversight applicable to wireless broadband networks should focus on maximizing the ability of end users to experience the Internet in an open, robust, and seamless manner.
- Any principles applicable to wireless broadband networks should account for the pertinent technical and market circumstances, by acknowledging the flexibility needed for network operators to manage their wireless networks in a reasonable manner.

Respectfully,

/s/

Alan Davidson
Director of Public Policy, Americas
Google Inc.

/s/

Thomas J. Tauke
Executive Vice President, Public
Affairs, Policy & Communications
Verizon