

July 30, 2012

***Via Electronic Filing***

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

**Re: Notice of Oral *Ex Parte* Communications, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36**

On July 25, 2012, representatives from ISPs and other organizations and companies met with members of the Federal Communications Commission to discuss issues associated with the Commission's 2012 broadband measurement and performance program. The meeting focused on reviewing the measurement program's founding principles and ensuring open, transparent broadband measurement. FCC Chief Technologist, Henning Schulzrinne, began the meeting by reviewing a slide deck presenting these principles in draft. The principles as presented during the meeting are attached to the Commission's July 26, 2012 *ex parte* filing. M-Lab representatives, Thomas Gideon and Meredith Whittaker, attended the meeting. M-Lab applauds these principles, but was disappointed by ISP representatives' emphatic resistance to both the principles and to transparent processes and scientifically verifiable measurement.

Dr. Schulzrinne's presentation emphasized a common culture favoring scientific credibility and open processes that have guided the measurement program since its founding. Dr. Schulzrinne voiced the belief that as this was the beginning of the third measurement cycle, it was time to set down on record the tenets that had guided the program informally. These principles emphasize open, transparent, replicable measurement, and the inclusion of all stakeholders -- ISPs, researchers, and the public interest community. In total, the program principles demonstrate a clear commitment to the scientific process, ensuring valid results and robust measurement. M-Lab supports these principles, and applauds the FCC for its clear commitment to scientifically sound methodologies.

M-Lab's representatives were disappointed at the strong opposition to these principles voiced by ISP representatives. This opposition was directed most strongly at the principles' explicitly foregoing the use of ISP servers to collect data that would be used in the FCC's official reports. The Commission repeatedly clarified that this exclusion did not represent a change from operating procedure in place since the program's founding, but ISP representatives continued to make that case. Many ISP representatives suggested that making the principles explicit would compromise the collaborative nature of the program. They also suggested that the program would be more effective *without* publicly documented, publicly available guidelines. M-Lab's representatives reject this assessment and believe that peer-review and public documentation is essential to ensuring scientific integrity.

Collaborative members also discussed the FCC's proposal to create an IETF-style technical advisory group that would make documented, transparent technical specifications for use by the Broadband Measurement Initiative. This proposal was proposed by Dr. Schulzrinne as a means to more thoroughly including the research community during a meeting with Daniel Kirschner, Counselor to the General Counsel, and M-Lab representatives on July 20, 2012. The purpose of the group would be to provide transparent technical justifications that would guide the collaborative in making and implementing decisions that follow the principles of open, transparent measurement and scientifically sound methodologies. M-Lab supports this proposal and applauds Dr. Schulzrinne and Mr. Kirschner for their commitment to ensuring scientifically credible measurement. ISP representatives initially rejected the establishment of this group, citing the current collaborative meeting as adequately equipped to make technical, methodological, and epistemological broadband measurement decisions.

In addition to the ISP representatives' clear resistance to the Commission's draft principles in support of open, transparent measurement, and their opposition to the formation of an IETF-style engineering and research group that would provide transparent technical parameters to the larger collaborative, the ISP representatives also resisted the establishment of operational transparency. Multiple times, members of the collaborative were asked by representatives from various ISPs to commit to allowing the FCC to file the sole meeting ex parte, and thus provide the only record of the meetings. M-Lab believes that all stakeholders at the FCC's meetings are entitled to file ex partes of their meetings with government officials. In addition, given the misrepresentations that have appeared in numerous ex partes, M-Lab believes it is imperative to correct the public record when this occurs.

In summation, M-Lab was impressed by the Commission's clear commitment to open, transparent, verifiable measurement, but disappointed with the ISP representatives' overall objection to transparency, open and documented processes, and to the Commission's restatement of principles that have not changed since the beginning of the program. We hope that the collaborative will recommit to the principles articulated by the Commission in further meetings, and establish an engineering and research group to develop parameters for this endeavor that ascribe to widely established scientific best practices.

Finally, while this ex parte does not capture the ire and raised voices that characterized much of the behavior by ISP representatives during this meeting, we are hopeful that those in the room will commit to a calm, rational, and collaborative discussion in the future. It is imperative that participants in multi-stakeholder processes are not abusive to other members of the collaborative and such behavior is both unethical and unprofessional. M-Lab looks forward to continuing to work together productively to provide scientifically rigorous broadband measurements to key decision-makers and the American public.

Respectfully submitted,

/s/ Thomas Gideon

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