

VIA ELECTRONIC AND U.S. MAIL

June 30, 2011

Chairman Julius Genachowski
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554**Re: *Complaint of Free Press Against Cellco Partnership d/b/a Verizon Wireless for Violating Conditions Imposed on C Block of Upper 700 MHz Spectrum, filed June 6, 2011.***

Dear Chairman Genachowski:

Recent news reports suggest that mobile broadband providers such as Verizon Wireless, AT&T, and T-Mobile have asked Google to disable tethering applications in Google's mobile application store, the Android Market.¹ These free and low-cost applications represent an important innovation in the development of the mobile Internet — they allow users to attach multiple devices to a single broadband connection. I understand that Free Press, a nonprofit organization with a commitment to open Internet issues, recently filed a complaint alleging that if Verizon Wireless asked Google to disable these applications, it violated the rules that govern its LTE network.²

Verizon Wireless's practice and Free Press's complaint raise fundamental issues of Internet openness policy. While only two parties are named in the complaint proceeding, the outcome of the proceeding will have a far-reaching impact on many businesses, innovators, and users in the Internet ecosystem. Verizon Wireless is the largest provider of wireless broadband services and Android is the most popular wireless operating system, so this practice has a significant market impact and will affect a large number of users and applications-innovators. Allowing network providers to pick winners and losers online — whether by actively blocking particular applications or simply by

¹ See Chris Ziegler, *Google Plays Ball with Carriers to Kill Tethering Apps, Violates Spirit of the 'Open Access' It Bid \$4.6B to Protect*, This is My Next, <http://thisismynext.com/2011/05/02/verizons-removal-tethering-apps-android-market-shame-fcc-violation/>, May 2, 2011; see also *Is Wireless Tether About to Get the Android Axe, Carriers Finally Starting to Block It?*, <http://www.droid-life.com/2011/04/29/is-wireless-tether-about-to-get-the-android-axe-carriers-finally-starting-to-block-it/>, Apr. 29, 2011; Jared Newman, *Free Android Tethering Blocked by AT&T, Verizon and T-Mobile*, Technogizer: A Smarter Take on Tech, <http://technogizer.com/2011/05/02/free-android-tethering-blocked-by-att-verizon-and-t-mobile/>, May 2, 2011; Marguerite Reardon, *Tethering Apps 'Blocked' in Android Market*, Signal Strength: CNet News, http://news.cnet.com/8301-30686_3-20059461-266.html, May 3, 2011.

² *Complaint of Free Press Against Cellco Partnership d/b/a Verizon Wireless for Violating Conditions Imposed on C Block of Upper 700 MHz Spectrum*, filed June 6, 2011; 47 C.F.R. § 27.16.

making them more difficult to use — harms application-level innovation.³ As the Commission made clear in its Open Internet Order, the existence of Openness conditions in the C Block of the 700 MHz band was an important reason to proceed more incrementally with respect to mobile broadband and adopt more limited rules for mobile than for wireline broadband at this time.⁴ As a result, Free Press’s complaint implicates not only the specific question of whether Verizon Wireless has violated the conditions associated with its spectrum licenses, but also the more general question of how to apply openness rules to mobile networks.

I understand that the proceeding is currently designated as a restricted proceeding under the Commission’s *ex parte* rules.⁵ Because I believe the issues presented by the complaint raise central questions about the future of the mobile Internet, I urge you to open this proceeding up for public comment by re-designating it as a permit-but-disclose proceeding under the Commission’s rules. In particular, I would welcome the opportunity to discuss these issues with you further. I am sure that many innovators, entrepreneurs and investors in mobile applications would want to do so as well. These issues are too important to be decided without meaningful public participation.

Very truly yours,

/s/ Barbara van Schewick

Barbara van Schewick
Associate Professor of Law and (by courtesy) Electrical Engineering
Faculty Director, Center for Internet and Society
Stanford Law School
650-723-8340
schewick@stanford.edu

cc: Marlene H. Dortch, Secretary (via U.S. mail)
Commissioner Michael Capps (via electronic and U.S. mail)
Commissioner Robert McDowell (via electronic and U.S. mail)
Commissioner Mignon Clyburn (via electronic and U.S. mail)
Austin Schlick, General Counsel (via electronic and U.S. mail)
Michele Ellison, Chief, Enforcement Bureau (via electronic and U.S. mail)
John T. Scott, Verizon Wireless (via electronic and U.S. mail)
Matt Wood, Free Press (via electronic and U.S. mail)
Aparna Sridhar, Free Press (via electronic and U.S. mail)

³ Testimony of Barbara van Schewick, Assistant Professor of Law, Stanford Law School, Second Public En Banc Hearing on Broadband Network Management Practices, *Formal Complaint of Free Press and Public Knowledge Against Comcast Corporation for Secretly Degrading Peer-to-Peer Applications; Broadband Industry Practices; Petition of Free Press et al. for Declaratory Ruling that Degrading an Internet Application Violates the FCC’s Internet Policy Statement and Does Not Meet an Exception for “Reasonable Network Management”*, WC Docket No. 07-52, at 7-8 (Apr. 17, 2008); Testimony of Barbara van Schewick, Assistant Professor of Law, Stanford Law School, Workshop on Innovation, Investment, and the Open Internet, *Preserving the Open Internet*, GN Docket No. 09-191; *Broadband Industry Practices*, WC Docket No. 07-52 (Jan 13, 2010).

⁴ *Preserving the Open Internet*, GN Docket No. 09-191; *Broadband Industry Practices*, WC Docket No. 07-52, Report and Order 25 FCC Rcd 17905, ¶¶ 95-96, 104-106 (2010) (*Open Internet Report and Order*) (“We expect our observations of how the 700 MHz open platform rules affect the mobile broadband sector to inform our ongoing analysis of the application of openness rules to mobile broadband generally.” *Ibid.*, footnote 297; “We are taking measured steps to protect openness for mobile broadband at this time in part because we want to better understand how the mobile broadband market is developing before determining whether adjustments to this framework are necessary. To that end, we will closely monitor developments in the mobile broadband market, with a particular focus on the following issues: (1) the effects of these rules, the C Block conditions, and market developments related to the openness of the Internet as accessed through mobile broadband [...]. *Ibid.*, ¶ 105).

⁵ 47 C.F.R. §§ 1.1200-1.1216.