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OPENINTERNETCOALITION.COM

April 13, 2009

The Honorable Gary Locke
Secretary, U.S. Department of
Commerce
Office of the Secretary
U.S. Department of Commerce
1401 Constitution Ave, NW
Washington, DC 20230

The Honorable Tom Vilsack
Secretary, U.S. Department of
Agriculture
Office of the Secretary
U.S. Department of Agriculture
1400 Independence Ave, SW
Washington, DC 20250

The Honorable Anna Gomez
Acting Assistant Secretary
Deputy Assistant Secretary for Communications and Information
Office of the Assistant Secretary
National Telecommunications Information Administration
U.S. Department of Commerce
1401 Constitution Ave, NW
Washington, DC 20230

Dear Secretary Vilsack, Secretary Locke, and Assistant Secretary Gomez:

The Open Internet Coalition, including the undersigned entities, strongly support the provisions of the Broadband Technology Opportunities Program (“BTOP”), which is included as part of the American Recovery and Reinvestment Act (“the Stimulus Act”) signed into law by President Obama on February 17, 2009.

Among other things, the Stimulus Act states that the purpose of the BTOP is to (1) provide improved access to broadband service to consumers residing in unserved and underserved areas and (2) stimulate the demand for broadband, economic growth, and job creation.¹

We enthusiastically support these goals. It is widely recognized that the Internet fuels innovation, education, and jobs. Consequently, we support the notion that the BTOP is a key ingredient in developing a comprehensive broadband plan that provides ubiquitous, affordable high speed Internet connections to all Americans.

The Stimulus Act requires the Assistant Secretary of the National Telecommunications and Information Administration (“NTIA”), in cooperation with the

¹ Public Law 111-5, Section 6001(b)(1) and (b)(5).

Federal Communications Commission, to “publish the non-discrimination and network interconnection obligations that shall be contractual conditions of grants awarded.”² These conditions “include at a minimum adherence to the principles contained in the Commission’s broadband policy statement.”³

We would like to emphasize our enthusiastic support for this common-sense notion that grant recipients must adhere to general openness principles. The open character of the Internet marketplace is what has fed the engine of economic and job growth in the information, communications, and technology sector for over a decade.

In publishing the nondiscrimination obligations, we urge the Assistant Secretary to include these contractual conditions, in addition to requiring adherence to the FCC’s Broadband Policy Statement—

Grant recipients, offering service to the public, A) must not operate their networks in such a way that privileges, degrades, prioritizes, or discriminates against any lawful Internet content application or service transmitted over the grant recipient’s network; and B) must offer bandwidth for Internet access upon reasonable request, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. Nondiscrimination shall not be construed to prohibit a grant recipient from engaging in reasonable network management consistent with the principle of nondiscrimination.

In publishing the network interconnection requirements, we urge the Assistant Secretary to require that grant recipients establish sufficient interconnection to provide consumers with robust access to the Internet.

Moreover, the nondiscrimination and interconnection obligations should apply in a technologically and platform neutral manner, to all grant recipients, regardless of whether the recipient provides wireless services, wireline services, or satellite services.

In addition, the NTIA should give priority to those qualified applicants with plans to deploy high speed fiber or wireless infrastructure, especially in those areas where access to such infrastructure is non-existent or inadequate. Using federal dollars to create a one-time investment in permanent fiber infrastructure is in most cases the most efficient use of federal dollars, which will benefit the public and a wide array of entities that rely on the Internet for commerce, health care, education, and other communications.

If you or your staff have any questions, please contact Markham Erickson at merickson@holcherickson.com or at (202) 624-1462.

² *Id.* at Section 6001(j).

³ *Id.*

Sincerely,



Markham C. Erickson
Executive Director

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Cc: Michael J. Copps, Acting Chairman
Federal Communications Commission