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The Honorable Edolphus Towns
The Honorable Darrell Issa
House Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Towns and Congressman Issa:

As Chairman and Ranking Member of the Committee on Oversight and Government Reform, your committee has a special responsibility to oversee ethics matters with federal policy implications. Few policy areas have become as urgently in need of federal oversight in recent years as the protection of personal privacy. Data theft is growing and by one metric, a person who only has information about gender, zip code and date of birth, can correctly identify an individual with 87 percent certainty.

As you are likely aware, recently the Federal Trade Commission formally closed its investigation of Google over data the company surreptitiously collected through its Street View operations. The FTC took this action after Google made commitments to the Commission regarding changes to its privacy policies and training. Importantly, these assurances were not satisfactory to approximately 38 state Attorneys General who -- under the leadership of Connecticut's Attorney General Richard Blumenthal -- announced that they are not abandoning their investigation. Indeed, it is shocking that the FTC so quickly dismissed the behavior that caused Mr. Blumenthal to say on October 27:

"Our investigation is continuing into Google's alleged invasion of privacy through wireless networks until all the facts are verified. Google's alarming admission last week -- confirming it collected entire emails and passwords -- only heightened our concerns about how and why this data was collected. Google's story has changed during the course of our multistate investigation -- demonstrating the need for sustained scrutiny. Rather than rely on Google's explanations and assurances, our multistate coalition... will work to confirm the facts about how this happened and how consumers will be protected going forward."

The Commission's summary decision to close its investigation is highly questionable for other reasons: Most obviously, late last month Google admitted what it has long denied -- that its Street View cameras captured entire e-mails, URLs and even user passwords. At a minimum, this raises serious issues involving federal eavesdropping and wiretapping laws, Google's credibility and especially what other Street View information the company amassed, despite its denials. Yet four days after Google's stunning about-face on this issue, the FTC closed its investigation.

Regulators in other nations have been singularly unimpressed with the notion that Google's promises are sufficient to protect consumers, especially after its changing public explanations. Last weekend, the

British Government re-opened its investigation into Google's actions. The disclosure comes just days after Canada's privacy watchdog said Google had collected complete emails and accused Google of violating the rights of thousands of Canadians. Unlike the FTC, the governments of Italy, France, the Czech Republic and Germany are also continuing their Street View investigation.

There is another deeply disturbing aspect to the FTC's decision. Less than a week before Google's announcement, President Obama went to the home of Google executive Marissa Mayer for a \$30,000-per-person Democratic Party fundraiser. At minimum, we urge the committee to conduct a fair and dispassionate investigation as to any linkage in these three events: the fundraiser, Google's disclosure and the FTC's action.

Moreover, this FTC decision is striking given the Commission's repeated willingness to pursue cases against companies for similar privacy violations, often less far-reaching than Street View. For example, during the Obama Administration's tenure, the FTC has brought the following privacy-related actions:

- In 2010, the FTC charged Twitter, Inc. with putting its customers' privacy at risk by failing adequately to safeguard their personal information. According to the FTC, Twitter's lapses in data security allowed hackers to obtain unauthorized administrative control. <http://www.ftc.gov/os/caselist/0923093/100624twittercmpt.pdf>.
- In 2010, the FTC pressed charges against a mortgage broker for failing to provide reasonable safeguards for sensitive data, contrary to its stated privacy policy. The broker had discarded sensitive information without taking appropriate precautions. <http://www.ftc.gov/os/caselist/0723067/index.shtm>.
- In 2009, the FTC brought charges against Sears Holding Management Corporation for failing to disclose the full scope of personal information Sears was collecting, including that Sears' software tracked "the text of secure pages . . . and select header fields that could show the sender, recipient, subject, and size of web-based email messages" and that Sears "transmit[ted] nearly all of the monitored information . . . to [its] remote computer servers." <http://www.ftc.gov/os/caselist/0823099/090604searscmpt.pdf>.
- In 2009, the FTC charged CVS Caremark Corporation for failing to maintain reasonable and appropriate measures to secure the information it had collected. The FTC pointed to the company's failure to train employees with respect to data security and the absence of measures to assess compliance. <http://www.ftc.gov/os/caselist/0723119/index.shtm>.

II. Google, Ethics & the Obama Administration: Questions keep building

These disturbing actions and allegations are part of a growing body of evidence suggesting the Obama Administration's unusually close relationship with Google has resulted in favoritism towards the company on federal policy issues. As it relates to the FTC and privacy issues in particular, Google and the Obama Administration have already been charged with engaging in potentially questionable arrangements.

As reported in a *Fast Company* news story titled "Googling the Google Lobbyists", Will DeVries, a former attorney with Wilmer Cutler Pickering Hale & Dorr who recently joined Google as policy counsel to lobby on privacy issues, was quoted as saying that the Electronic Communications Privacy Act (ECPA) was "undermining the growth of our services and the growth of the cloud." DeVries' comments are significant as it gives us an additional glimpse into Google's opposition to more prescriptive Internet privacy rules.

More importantly, as NLPC reported last week, on September 28, 2009, Becky Burr -- another Google lobbyist at Wilmer Hale -- sent an email to White House official Susan Crawford asking for a meeting to specifically request the White House's assistance in urging the Federal Trade Commission to back off on privacy. Ms. Burr's email request is as follows:

"Wondering if we can get together to discuss the movement away from a 'notice and choice' privacy paradigm to a more prescriptive normative approach? This is an emerging theme in the academy, and seems to be gathering favor at the FTC. The move has some worrisome implications for innovation, and it seems important for the FTC to have administration input on this... Let me know if this is something of interest."

Ms. Crawford replied the same day and suggested that White House Deputy Chief Technology Officer Andrew McLaughlin -- himself a former Google employee who was sanctioned earlier this year for emailing privately through his Gmail account with his former Google colleagues about policy issues that benefited his former employer -- should also be a part of that meeting. As documents unearthed by Consumer Watchdog indicate (pages 50-52), Mr. McLaughlin agreed to meet with Ms. Crawford and Ms. Burr, suggesting Friday, October 2, 2009 at noon.

While it is not clear what the outcome of that meeting entailed, or indeed whether the meeting ever took place, we find it troubling to say the least, that Mr. McLaughlin would agree to meet with a Google lobbyist who clearly was seeking the White House's assistance in pressuring the FTC to back off on privacy issues, arguably among the most important public policy issues for the Mountain View company today.

III. Google & The White House: Why aren't ethics rules enforced?

This issue involving Ms. Burr, Ms. Crawford and the FTC is not the only time that Google and its former lobbyist Mr. McLaughlin have been involved in questionable ethical dealings. As news stories over several months have demonstrated, it appears that Google has also been inappropriately working through Mr. McLaughlin to influence government policy on multiple policy issues that have a major impact on the company's public policy agenda.

As you are aware, prior to joining the Obama Administration, Mr. McLaughlin served as Google's head of global public policy. His appointment to serve as the Deputy CTO for Internet issues raised concerns among several government ethics groups from the moment his appointment was announced. An October 2009 Fortune magazine article pointed out that in his previous role at Google, Mr. McLaughlin was a champion for Google's policy issues and would be in a position to "shape policy that affects Google's rivals." White House spokesman Nick Shapiro remarked at the time, "Mr. McLaughlin's appointment complies with the letter and spirit of ethics standards Obama imposes on his administration."

In point of fact, Mr. McLaughlin's appointment caused major concern precisely because his position as Deputy Chief Technology Officer for Internet Policy placed him at the policymaking nexus of virtually all of the most important Internet issues being debated in the country today. Given Mr. McLaughlin's former position as the head of Google's Global Public Policy operation, he had a special responsibility not only to avoid conflicts of interest, but even the appearance of conflict.

In April of this year Mr. McLaughlin's personal Gmail contact list was exposed in a news story published by the news website Big Government. Because of a privacy glitch, Google's Buzz social networking service automatically exposed its users Gmail contacts for anyone to see. As Big Government reported,

more than two dozen of Google's senior lobbyists and lawyers were listed in Mr. McLaughlin's Google Buzz contact list.

As a consequence, Consumer Watchdog filed a Freedom of Information Act (FOIA) request for all of Mr. McLaughlin's Gmail messages to Google officials in May, copies of which were posted at the Consumer Watchdog site and can be found at the links below:

<http://insidegoogle.com/wp-content/uploads/2010/05/McLaughlin1.pdf>

<http://insidegoogle.com/wp-content/uploads/2010/05/McLaughlin2.pdf>

<http://insidegoogle.com/wp-content/uploads/2010/05/McLaughlin3.pdf>

While Mr. McLaughlin was officially reprimanded in late May by OSTP Director John Holdren for actions that "implicated" the Federal Records Act and the President's Ethics pledge, Mr. Holdren described the breaches as "inadvertent."

As part of our own investigation into this issue, the National Legal and Policy Center would like to shed additional light on the emails released as part of Consumer Watchdog's FOIA request, as well as provide the committee with details of additional email communications between Mr. McLaughlin and Google that raise new and troubling questions.

While some of the analysis below is simply an in-depth examination of the emails released as a result of the previous Consumer Watchdog FOIA request, we are including new information that stems from our own FOIA inquiry into Mr. McLaughlin's email communications. Copies of the FOIA'd email communications can be found here:

<http://www.nlpc.org/sites/default/files/WhiteHouseEmails.pdf>

IV. Email messages and meetings about net neutrality between Free Press' Policy Director Ben Scott and Mr. McLaughlin

Until May 2010, Ben Scott served as the Policy Director for Free Press, arguably the most aggressive advocate for stronger net neutrality regulations. Mr. Scott left Free Press to join the State Department as a policy adviser for innovation. Free Press has worked closely with Google in advocating for net neutrality regulations and has attended several meetings with Google at both the White House and Federal Communications Commission.

On January 19, 2010, Mr. Scott sent an email to Mr. McLaughlin asking if there was "any chance of a broadband mention in the SOTU [State of the Union]. Planning my press strategy."

On January 20, 2010, Mr. Scott emailed Mr. McLaughlin asking when he "might have time for a cup of coffee" to discuss "fall-out from Comcast oral argument." Mr. Scott pointed out that "NN is in jeopardy."

On February 12, 2010, Mr. McLaughlin replied, apologizing for the delay and writing "Let's connect." Mr. McLaughlin provided a phone number (redacted) that included the area code 917.

On February 26, 2010, Mr. Scott suggests that they meet for coffee: "Shall we go to the same coffee shop where we met last time." Mr. McLaughlin replies, "Let's meet at Teaism on H St, NW corner of Lafayette Park."

This string of emails is significant for several reasons. On June 24, 2010 the *New York Times* reported that White House officials were routinely meeting for discussions with lobbyists and special interests

outside of 1600 Pennsylvania Avenue to avoid “disclosure on the visitors’ log that the White House releases as part of its pledge to be the ‘most transparent presidential administration in history.’”

As importantly, it appears that Mr. McLaughlin may have been using his private cell phone (area code 917) to conduct conversations with Mr. Scott, a possible violation of the Presidential Records Act, about which you have already raised questions in the context of Mr. McLaughlin’s private Gmail communications.

V. Email messages from Open Internet Coalition Executive Director Markham Erickson on net neutrality and intellectual property matters

Markham Erickson serves as the Executive Director of the Open Internet Coalition, an organization started and funded by Google and which includes other corporate members who have been active in advocating for more strict net neutrality enforcement of Google’s telecom competitors. Mr. Erickson and Google representatives have met on several occasions with the White House and Federal Communications Commission.

Mr. Erickson is also a partner at the Washington boutique law firm of Holch & Erickson and since 2001 has managed the Net Coalition, one of whose major five “trustees” is Google according to [the organization’s website](#). According to Senate lobbying disclosure reports, Holch & Erickson and the Net Coalition have reported \$540,000 in lobbying revenues from 2000 through 2008.

Additionally, in November 2006, Mr. Erickson filed petitions and comment letters with the U.S. Securities and Exchange Commission on behalf of Google asking the Commission to review fees that U.S. stock exchanges charge for market data.

On January 14th of this year Mr. Erickson provided Mr. McLaughlin with copies of comments Mr. Erickson had filed in the FCC’s proceeding on net neutrality.

On February 17th, 2010, Mr. Erickson emailed Mr. McLaughlin to report that he was “meeting with Victoria [Espinel] to discuss Internet IP matters.” Ms. Espinel serves as the U.S. Intellectual Property Coordinator at the Office of Management and Budget and has taken a strong stance on Internet piracy issues. Following that meeting, Mr. Erickson emailed Mr. McLaughlin again with the message “Startling, disturbing meeting. I wonder if we can chat.”

Two weeks later on March 5, 2010, Mr. Erickson emailed Mr. McLaughlin again, forwarding a letter to Ms. Espinel thanking her for meeting with members of the NetCoalition and inviting her to San Francisco to meet with Google, Yahoo and eBay representatives, and specifically Google’s Chief Legal Officer David Drummond and Google lobbyist Johanna Shelton.

While it is unclear whether Mr. McLaughlin responded to Mr. Erickson via email or by phone, what is clear is that Mr. Erickson believed it important to keep Mr. McLaughlin “in the loop” and fully apprised of several key policy issues that were of major public policy importance to Google. Intellectual property issues in particular, have been significant issues for the company as Google has been criticized in the past for not doing more to protect copyright.

VI. Mr. McLaughlin’s alleged advocacy on behalf of Clearwire Communications.

What hasn’t received as much attention as Mr. McLaughlin’s email exchanges with his former employers, but what is potentially equally as troubling, are news stories from earlier this year alleging that Mr.

McLaughlin may have also been involved in efforts to benefit Clearwire Communications, a company in which Google has a substantial \$500 million investment.

In a story that appeared to break first on a military blog called Black Five in April of this year, it was alleged that Mr. McLaughlin was promoting the services of Clearwire Communications to provide emergency telecommunications capabilities as part of Haiti's earthquake relief efforts.

According to Black Five and other blogs, participants on teleconference calls to discuss restoring telecommunications capabilities in Haiti were taken aback by Mr. McLaughlin's apparent attempts to "pitch" Clearwire's services. The Black Five report alleged that participants on the call complained directly to the White House about the inappropriateness of Mr. McLaughlin's Clearwire advocacy.

While we have no knowledge of the veracity of these reports and hasten to add that members of the committee should be rightly skeptical of un-sourced blog stories (which this appears to be) we do find it potentially troubling and believe given the record outlined above, that the allegations deserve further investigation.

VII. The need for further inquiry

During the Bush Administration, many rightfully questioned the special treatment that was afforded companies with a close relationship to the White House. Several hearings were held for instance on Halliburton's improper influence, because the American people had a right to know if a company was using its influence to affect federal policies.

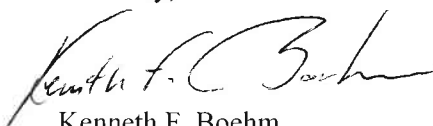
Like Halliburton in the previous Administration, Google has an exceptionally close relationship with the current Administration. Google employees and executives were among the largest contributors to the Obama campaign; Google CEO Eric Schmidt actively stumped for candidate Obama; Mr. Schmidt and other Google executives paid \$25,000 apiece to help pay for the inaugural celebration; Mr. Schmidt serves as President Obama's science and technology adviser; and several Google employees now serve in senior positions inside the Administration. And in this cycle, a Google executive hosted a \$30,000 fundraiser for President Obama just last month. Days later the FTC decided to close its investigation into Google Street View's violation of privacy.

The FTC's decision to close its investigation into Google's unauthorized gathering of private data through its Google Street View program is troubling enough. But looked at in the context of this Administration's extraordinarily close relationship with Google, no fair-minded person could look at the record so far and not believe that further investigation is warranted. These actions call out for your committee to conduct a thorough investigation so that citizens will have the benefit of the full record.

Finally, let me be clear: This investigation must be fair-minded. In recent years, reasonable people in both parties have turned down government service out of concern over unfair treatment of their personal reputations. That is why a responsible and good-faith investigation in this case is so important.

Thank you for your consideration and action on this important matter.

Sincerely,



Kenneth F. Boehm
Chairman