

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Restoring Internet Freedom) WC Docket No. 17-108
)

COMMENTS OF DIGITAL CONTENT NEXT

I. Introduction

Digital Content Next (DCN), representing many of the Internet’s most trusted and respected publishing brands, appreciates the opportunity to submit comments in the above-captioned proceeding.¹ Founded in 2001, DCN is the only trade organization dedicated to serving the unique and diverse needs of high-quality digital content companies that manage trusted, direct relationships with consumers and marketers.² DCN’s members are some of the most trusted and well-respected media brands that, together, have an unduplicated audience of 223,098 million unique visitors or 100 percent reach of the U.S. online population.

DCN provides these comments to any net neutrality rules adopted by the Commission. Ideally, Congress should pass legislation to enshrine the principles of net neutrality into law and provide certainty for consumers and industry. In the absence of legislation, any rules should both encourage investment and innovation in content creation for consumers, and ensure that the Internet is an open platform that supports consumer choice and allows for competition for the exchange of ideas, information and entertainment. The Internet has generated economic growth, enabled the free flow of ideas and increased connectivity for the world. Premium publishers

¹ *Restoring Internet Freedom*, Notice of Proposed Rulemaking, WC Docket No. 17-108, 32 FCC Rcd. 4434 (rel. May 23, 2017) (RIF NPRM).

² See <https://digitalcontentnext.org/membership/members/> for a listing of our current members.

have been at the forefront creating trusted, digital experiences that have entertained and educated consumers.

In order to protect and maintain the dynamic nature of the Internet, the FCC should ensure that consumers can access lawful content and carefully consider the impact of preferential deals on the quality and diversity of content available to consumers.

II. The No-Blocking and No-Throttling Rules Should Remain in Place

In the RIF NPRM, the Commission seeks comment on whether bright line rules are needed, questioning whether ex ante rules are necessary in the broadband context.³ In that context, the Commission states it opposes blocking and throttling consumers' access to lawful material and has found that such protections are "essential to the Internet's openness."⁴ The RIF NPRM "merely seeks comment on the appropriate means to achieve this outcome."⁵

DCN believes that the best approach to ensure the essential openness of the Internet is through clear, bright line rules that prohibit broadband providers from blocking or throttling a consumer's ability to access lawful content. Clear rules ensure stability for the marketplace. We are concerned with relying on the Federal Trade Commission to regulate in this area, given the FTC's limited rulemaking authority and more prescribed enforcement authority.

For these reasons, we believe it would be better for a healthy marketplace to have clear, bright line rules that prohibit blocking or throttling a consumer's ability to access lawful and authorized content.

³ RIF NPRM at 4460, para. 77.

⁴ *Id.* at paras. 80, 83.

⁵ *Id.*

III. Discriminatory Paid Prioritization and Zero-Rating Practices Raise Serious Concerns

In the RIF NPRM, the Commission seeks comment on whether a continuing ban on paid prioritization is needed. The Commission notes that “several large Internet service providers made it clear that they did not engage in paid prioritization and had no plans to do so.”⁶ The Commission seeks comment, in this regard, on trade-offs associated with a ban on this practice and whether it may suppress pro-competitive activity.

DCN believes discriminatory paid prioritization deals have the potential to inflict long-term damage on competition and, ultimately, to limit the diversity and quality of content available to consumers. In general, any broadband provider that effectively controls or influences demand for content, impacts the success or failure of that content creator. Paid prioritization arrangements may not be anti-competitive by default and they could be a useful tool in a healthy, innovative marketplace. However, as we noted in our 2014 comments on the FCC’s Open Internet Order, we have grave concerns about the impact of preferential treatment of certain content over other content on competition in the marketplace, especially preferential treatment of content affiliated with an ISP. While peering arrangements may be useful for network management, there could be a significant incentive for broadband providers to engage in paid prioritization arrangements in an anti-competitive manner. There is also a risk that discriminatory paid prioritization deals could favor established businesses by increasing the cost for new businesses to enter the market. This in turn could lead to fewer new entrants coming into the marketplace, resulting in less innovation – a hallmark of a dynamic Internet. This could result in the opposite of the virtuous circle that the Commission intended to protect by establishing these rules.⁷ Also, non-profit entities, which enrich our society, are far less likely to be able to take advantage of paid prioritization deals. We are concerned that discriminatory paid prioritization deals would serve to limit the number and variety of content creators on the

⁶ RIF NPRM at 4462, para. 84.

⁷ 740 F.3d 623, 633 (D.C. Cir. 2014).

Internet. We are especially concerned that these deals could inadvertently restrict the free flow of information and viewpoints on the Internet, which would harm our democracy.

We have similar concerns with regard to discriminatory zero-rating plans, particularly those that may prefer affiliated content. Under “zero-rating” plans, broadband providers allow consumers to access certain content from their mobile device without counting that access against the consumer’s data allowance. While there may be short term benefits to consumers, such as “free” access to limited content, we are concerned about the long-term damage to competition and, ultimately, to the diversity and quality of content available to consumers. To fully understand the concerns, it is instructive to consider several use cases.

a. New Publishers

In a world where a mobile broadband provider allows consumers to access an exclusive amount of content without counting against their data allowance, consumers are heavily incentivized to access only the content that enjoys this favored treatment. This dynamic is especially harmful to new publishers as they are hindered in their ability to build an audience. Further, advertising revenue, which funds most digital content, is far more likely to flow to publishers that have been included in a “zero-rating” plan.

Again, we have grave concerns that these types of practices will serve to limit competition and, ultimately, lessen the quality and amount of content available to consumers.

b. Service Providers

In the past several years, a few very large digital platforms have launched proprietary environments inside of their apps and browsers intended to accelerate consumer experiences. While this acceleration is a positive for consumer experiences, it must compete on engineering alone. It would be harmful to publishers if broadband providers granted these proprietary platforms preferential treatment giving their ecosystems an advantage over the open web.

Much the same, cloud services often used by publishers to deliver services could be negatively impacted by paid prioritization or neutrality deals where a broadband provider could

give a partner or its own hosting services an advantage over a competitor. We were pleased to see Amazon note this concern as a reason that strong net neutrality protections are needed. Publishers, large and small, cannot afford to have multiple cloud services and should not be forced to make choices based on privileged traffic access.

c. Financial News Organizations

There are a variety of news organizations that provide real-time information and analysis of financial markets. This healthy dynamic of competitive reporting leads to many benefits for consumers and our society at large. However, as more consumers look for content on mobile devices, we are concerned that Verizon is currently incentivized to “zero-rate” content on Yahoo Finance, which Verizon recently acquired, while penalizing access to news organizations that specialize in reporting on financial markets. In this case, Verizon would not be inclined to include news outlets that compete with Yahoo Finance.

Indeed, Verizon’s shareholders would expect Verizon to provide preferential access to Yahoo Tech, Yahoo Beauty, Yahoo Sports, Yahoo Lifestyle and the Huffington Post. At the same time, Verizon is not likely to allow preferential treatment for publishers that compete with any of their content verticals. In short, other tech review sites, fashion magazines, sports sites, lifestyle publications and news organizations would be competing on an unlevel playing field.

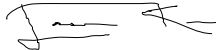
Considering that there are only a handful of mobile broadband providers, it is quickly apparent that discriminatory zero-rating creates a small game of musical chairs. Once the mobile broadband providers have content for a specific vertical, the remaining content creators are left without a chair and are put at a significant competitive disadvantage. Instead of competing on quality of content, publishers are forced to compete over who can be bought first by the mobile broadband provider.

As noted in the above use cases, discriminatory zero-rating plans may benefit consumers in the short-term by allowing “free” access to content. In the long term, however, these plans could serve to limit the quality and amount of content available to consumers. We are concerned that discriminatory zero-rating plans would lead to less competition and a lack of diversity among content creators – which would truly have a negative effect on our society.

IV. Conclusion

DCN appreciates the opportunity to submit these comments for your consideration. As the Commission moves forward it is critical to protect consumers from not only past but also potential harms. Clear rules offer an opportunity to do that in a way that the entire ecosystem, including broadband providers, agree offers enforceable protections. We look forward to working with you to protect the open, dynamic nature of the Internet.

Respectfully submitted,



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