

September 11, 2017

**VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: "Restoring Internet Freedom", WC Docket No. 17-108

Dear Ms. Dortch,

On September 7, 2017, I met with FCC staff, as listed below, regarding the above-reference proceeding.

At the meeting, I explained that the no-throttling rule does not prevent broadband Internet access service providers from offering differentiated service that benefit consumers, and does not harm latency-sensitive applications. Internet standards developed for this purpose permit and encourage each broadband Internet access service provider to express sets of Quality-of-Service (QoS) levels that it supports and to explain which class of applications each QoS level is designed for. These Internet standards also permit end-users (or applications acting on behalf of end-users) to determine which applications request which types of QoS. Furthermore, user choice over QoS is vastly superior to a broadband Internet access service provider unilaterally determining which traffic obtains which QoS. First, end-users and their applications know better than do broadband Internet access service providers how end-users and their applications would benefit from QoS. Second, the incredibly wide variety of Internet applications rests on the ability of edge providers to offer applications without needing broadband Internet access service providers to tailor network management for a specific application. The no-throttling rule explicitly states that network practices that address such choices made by end users are not prohibited under the rule, and thus no revisions to the rule are needed to accommodate differentiated service or support latency-sensitive applications. Any claim that the no-throttling rule needs to be modified to permit differentiated service that benefits consumers or to avoid harm to latency-sensitive applications is factually wrong.

I also explained that the no-paid-prioritization rule does not harm the development of real-time applications. Internet standards give each broadband Internet access service provider the ability to determine whether to grant requests for QoS from its end-users, from directly connected network providers, and from directly connected edge providers, based on the agreements between them. Today, there exist agreements between a broadband Internet access service provider and its subscribers that determine the treatment of Internet traffic transmitted to and from each subscriber. There also exist interconnection agreements between each broadband Internet access service provider and directly connected network providers and edge providers that determine the treatment of Internet traffic exchanged between them. There is a long history of academic work explaining how such agreements may proscribe when requests for QoS from end-users, from edge providers, and from directly connected network providers will be granted. Furthermore, these agreements may include payment for QoS. The academic literature explains in detail how such payments may flow along the route between end-users, edge providers, and intermediary network providers. The no-paid-prioritization rule does not prohibit such payments along the route; it merely prohibits payments for prioritization between entities that are

not directly connected. Furthermore, the academic literature demonstrates that such payment flows along the route maximize user surplus. Economists who have argued to the contrary make a critical mistake that completely undermines their conclusions. Such economists ignore Internet architecture and ignore the possibility of payments between directly connected entities. In doing so, their conclusions merely show that payment for prioritization may increase social welfare. Better analyses, however, show that user surplus is maximized when payments flow along the route. Payments between non-directly connected entities reduce user surplus. Furthermore, consistent with Internet standards for QoS, integrating any such payments into existing agreements is far more efficient than requiring edge providers to negotiate agreements with every broadband Internet access service provider.

I also explained that legitimate network management practices are primarily motivated by a technical network management justification. If reasonable network management is redefined to include practices that are not primarily motivated by a technical network management justification, then the no-blocking and no-throttling rules will be defunct. Such a reversal would allow a broadband Internet access service provider to block or throttle an application simply because it believes doing so would maximize its profit. Redefining reasonable network management in this manner makes no sense whatsoever. I also explained that the guidance given in the 2015 Open Internet Order that “[i]n evaluating congestion management practices, a subset of network management practices, we will also consider whether the practice is triggered only during times of congestion and whether it is based on a user’s demand during the period of congestion” is exactly the right guidance. These characteristics of congestion management practices are exactly those *unanimously* identified by BITAG, a multi-stakeholder organization focused on bringing together engineers and technologists to develop consensus on broadband network management practices.

Finally, I explained that the enhancements to the transparency rule related to network performance metrics and network practices should be maintained. Disclosures of “practices that are applied to traffic associated with a particular user or user group” give end-users the most basic and most relevant information about *whether* a network practice will affect them or an application they are using. Disclosure of “the purpose of the practice, which users or data plans may be affected, the triggers that activate the use of the practice, the types of traffic that are subject to the practice, and the practice’s likely effects on end users’ experiences” give end-users the most basic and most relevant information about *how* a network practice will affect them. What disclosures about network practices could possibly be more basic and more relevant? Furthermore, these disclosures were *unanimously* recommended by BITAG. They are in no way burdensome or controversial.

In this meeting, I represented no one but myself, and did not speak on behalf of my employer or any other party.

/s/ Scott Jordan

Scott Jordan

cc: Jerusha Burnett  
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