

November 30, 2017

**Ex Parte**

Chairman Ajit Pai  
Commissioner Mignon Clyburn  
Commissioner Michael O’Rielly  
Commissioner Brendon Carr  
Commissioner Jessica Rosenworcel  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: *Restoring Internet Freedom*, GN Docket No. 17-108

Dear Chairman and Commissioners,

Earlier this month, along with representatives of Akamai Technologies, Inc. (“Akamai”), I met with each of your Wireline Legal Advisors to discuss the above-referenced proceeding. At each of those meetings, we asked the Commission, consistent with its precedent, to clarify in any final Order that Content Deliver Network (CDN) services differ from paid prioritization.

As Akamai explained both in its comments and in these meetings, CDNs localize traffic by caching data near end users and by identifying locations for users to access content in a way that both is neutral and reduces overall congestion on the Internet. Unlike prioritization, the localization of content does not favor some traffic over other traffic. Akamai explained that removing any confusion between localization and prioritization is important because the Commission’s use of these terms could have global regulatory implications.

Having had the opportunity to review the draft Order in this proceeding,<sup>1</sup> we respectfully submit that the clarification can be made by adding two brief sentences to the end of footnote 904, which references the last sentence in paragraph 251 of the draft Order. We provide our suggested language (highlighted in yellow) below.

We stress that this proposed footnote language does not – in any way – change the substance of the draft Order. Rather, it is needed to remove any confusion about CDN services that could have unintended and adverse consequences in international regulatory proceedings to impose net neutrality obligations.

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<sup>1</sup> *Restoring Internet Freedom*, public draft of Declaratory Ruling, Report and Order, and Order, FCC-CIRC 1712-04, WC Docket No. 17-10 (rel. Nov. 22, 2017) (“draft Order”).

251. . . . Paid prioritization could allow small and new edge providers to compete on a more even playing field against large edge providers, many of which have CDNs and other methods of distributing their content quickly to consumers.<sup>904</sup>

<sup>904</sup> Bolema, *Allow Paid Prioritization on the Internet for More, Not Less, Capital Investment* at 9 (asserting that the ban may discourage entry of new edge providers, because paid prioritization could allow them to quickly scale up); Media Freedom Comments at 2 (“[S]mall start-ups want the flexibility to partner with ISPs in paid priority arrangements (or other forms of service differentiation) in order to get a leg up, or at least stay competitive with, their larger, well-heeled competitors.”); Free State Comments at 52; CEI Comments at 3; Nokia Comments at 13-15. We thus reject arguments that allowing pro-competitive paid prioritization will reduce the entry and expansion of small, new edge providers. *See* Digital Content Next Comments at 3; DigitalOcean Comments at 6; Voices Coalition Comments at 43; Sen. Schatz Reply at 1; OTI Reply at 25-26; Public Knowledge Comments at 112-13 (“Prior to the FCC’s adoption of these rules, venture capitalists observed that because the possibility of paid prioritization, they planned to ‘stay away from’ startups working on video and media businesses and noted that a proposal to allow some forms of paid prioritization added ‘another impediment to the already challenging fund-raising environment for digital media startups.’”) (citations omitted); Engine Comments at 11 (asserting it is “absurd to think that [startups] could outbid some of the largest companies in the world for priority access. Startups simply do not have sufficient capital to pay access or prioritization fees of any kind.”). In so finding, we do not mean to suggest that CDN services themselves constitute paid prioritization. Rather, as explained elsewhere, *see infra* n. 610, CDNs simply localize content close to the end user, which improves delivery for all types of content.

We appreciate the Commission’s transparency in releasing the draft Order and request that this or similar footnote language be added to the Commission’s final Order. Please let me know if I can be of further assistance.

Sincerely,



Scott Blake Harris  
*Counsel to Akamai Technologies, Inc.*