

December 1, 2017

Ex Parte

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

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

On Wednesday, November 29, 2017, Cloudflare CEO Mathew Prince, along with General Counsel Doug Kramer, Washington representatives Mike Nelson & Alissa Starzak, and Cloudflare outside consultant Bruce Mehlman met with FCC Chairman Ajit Pai, Chief Legal Adviser Matthew Berry, Wireline Advisor Jay Schwarz, and Policy Advisor Nathan Leamer. This discussion mostly centered around the Commission's "Proposal to Restore Internet Freedom".

Mr. Berry and Chairman Pai sought further explanation of recent public comments Mr. Prince made regarding Internet service provided to the Commission and to the Chairman's home. Mr. Prince clarified his purpose was to highlight the importance of ensuring that rules exist to prevent gatekeepers (whether CDNs like Cloudflare, edge providers or ISPs) from arbitrarily degrading the service due to disagreement over public policy issues or partisanship. All attendees agreed that there should be a more productive policy discussion over this important issue.

Mr. Prince noted that while he believes neutrality is critical for the success & survival of the Internet economy, he did not support Chairman Wheeler's decision to abandon decades of prior precedent and re-regulate broadband under Title II, as described in a blog post in 2015 (<https://blog.cloudflare.com/net-neutrality/>). Given that Wheeler's order had been adopted and has been the law of the land for 2 years, however, Mr. Prince shared his current concerns that reversing it today could lead to instability and reduce investment based on the view that the rules of the road would shift with each new Administration. Cloudflare also worries that changing the rules now might imply that the FCC intends less protection for consumers and competitors than existed under the otherwise-adequate neutrality rules imposed under Title I by multiple prior FCC Chairmen to which this new order essentially proposes returning.

Chairman Pai made clear his belief that the proposed order offers even stronger consumer and competitor protections that existed under Chairman Genachowski, Chairman Martin, Chairman Powell or Chairman Kennard, including a robust new transparency rule that many free market commentators do not approve of. Pai noted that requiring all broadband providers to publicize their carriage terms and conditions will prevent unfair or uncompetitive marketplace actions lest massive consumer backlash ensue.

Chairman Pai likewise made clear that robust FTC oversight and enforcement will prevent monopolistic actions. The Chairman indicated his support for an open Internet that maximizes investment, protects competitors and encourages innovation, which he believes are best served by swift ex-post enforcement rather than over-broad ex-ante regulations. He pointed to a recent column (<https://stratechery.com/2017/pro-neutrality-anti-title-ii/>) by commentator Ben Thompson making this very point, which Mr. Prince agreed was well-articulated.

Chairman Pai and Mr. Prince discussed the possibility of new legislation better suited to develop rules of the road fit for the 2020s, rather than reliance upon the 1996 Act (or even older precedents undergirding Title II).

Sincerely



Bruce P. Mehlman
Consultant to Cloudflare