

November 12, 2014

VIA ECFS

EX PARTE NOTICE

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

Re: *In re Protecting and Promoting the Open Internet*, GN Docket No. 14-28

Dear Ms. Dortch:

On November 10, 2014, Joe Cavender from Level 3 Communications, LLC, Corie Wright from Netflix, Inc., Brian Huseman from Amazon, Dave Schaeffer from Cogent Communications Group, Inc., and the undersigned from COMPTTEL met with FCC Chairman Wheeler and his advisors Daniel Alvarez, Gigi Sohn, Eric Feigenbaum, and WCB Deputy Chief Matt DelNero concerning the above-captioned proceeding.¹

Ms. Wright urged the Chairman to adopt Open Internet rules that prohibit discrimination and access charges at all points in the network controlled by a broadband Internet access service provider (“ISP”), including entry points (*i.e.*, interconnection) to the last-mile network. She explained that the Internet’s end-to-end open architecture is dependent upon the seamless exchange of traffic between interconnecting networks; however, some large ISPs use their terminating access power to slow the exchange of Internet traffic and seek interconnection tolls for reaching consumers. This “last mile leverage” enables large ISPs to charge access fees that disadvantage rival online businesses and to set a price floor in the otherwise competitive transit and CDN markets. Ms. Wright also referenced the Chairman’s 1776 speech, wherein he recognized the lack of competition for high-speed broadband Internet access service and the high switching costs for Internet end users even when there is competition.

Likewise, Mr. Cavender stated that the Commission’s analysis regarding the incentives of consumer ISPs to leverage their terminating access monopolies to threaten the Open Internet set forth in the 2010 Open Internet Order was correct, an analysis echoed at the Open Internet Roundtable that focused on economic issues. Mr. Cavender noted that consumer ISPs have the ability to threaten the Internet and demand tolls through their practices both on their last mile networks and at the points of interconnection between their networks and the rest of the Internet, and he explained that it was at the points of interconnection where consumer ISPs presently are engaging in practices that harm the Internet. Mr. Cavender urged the Commission to address this

¹ Also in attendance were representatives from Akamai, Ad Hoc Telecom Users Committee, ADT, and NTCA. These entities will be filing their own ex parte letters.

issue promptly on the record already before the Commission. Doing so, he observed, would lead to stronger Open Internet rules that would both better protect all Internet users and be better grounded to withstand any legal challenge. Mr. Cavender further noted that the Commission could do so using a light-touch regulatory approach, referring to the Level 3 proposal on file with the Commission.²

Mr. Schaeffer similarly discussed the importance of strong open Internet rules, describing how some ISPs have created slow lanes at the interconnection point. He asserted that the Commission should use its full Title II authority to ensure that consumers have access to the lawful Internet content they seek without discrimination or additional access charges being imposed by the ISPs on transit or edge providers. He endorsed a bill and keep regime for the exchange of traffic with a terminating ISP, as the Commission adopted in its ICC reform for interconnected voice service.

Mr. Huseman asserted that the Commission should create clear, bright line rules against blocking and discrimination and paid prioritization that will provide the certainty required by all Internet end users and edge providers to access an Open Internet. Today, the Internet largely is a place where websites, services, and applications compete on the quality of their offerings. It should not shift to one where who is willing and able to pay the most to gatekeeping ISPs will succeed and the others will be relegated to slow lanes.

Finally, immediately after the meeting, I separately spoke with Mr. Alvarez and Mr. DelNero and stressed that the Chairman should move quickly to circulate an Order for full Commission consideration in order to provide certainty and clarity that is needed to ensure that all users will have access to an Open Internet. Accordingly, any additional information the Commission may need should be gathered expeditiously so that the Commission may proceed to an Order as soon as possible.

Sincerely,

/s/ Angie Kronenberg
Angie Kronenberg
Chief Advocate and General Counsel
COMPTel

cc: Chairman Wheeler
Daniel Alvarez
Gigi Sohn
Eric Feigenbaum
Matt DelNero

² See, e.g., Letter from Joseph C. Cavender, Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-28 (filed Oct. 27, 2014).