

February 11, 2015

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 twelfth Street, S.W.
Washington D.C. 20554

Re: *In the Matter of Protecting and Promoting the Open Internet, GN Docket No. 14-28; In re Matter of Framework for Broadband Internet Services; GN Docket No. 10-127*

Dear Ms. Dortch:

On February 10, 2014, Cogent Communications Group, Inc.'s ("Cogent") Founder and Chief Executive Officer, Dave Schaeffer, Cogent's Chief Legal Officer, Robert N. Beury, Jr., and I met with the following Commission staff: Daniel K. Alvarez, Legal Advisor, Office of the Chairman; Matthew S. DelNero, Deputy Bureau Chief, Wireline Competition Bureau; Gigi B. Sohn, Special Counsel for External Affairs, Office of the Chairman; and Stephanie Weiner, Associate General Counsel.

During the meeting, Mr. Schaeffer stated that reclassification of broadband Internet access service under Title II of the Communications Act, coupled with the explicit inclusion of interconnection practices within the scope of the new Open Internet rules, are vital to the preservation and perpetuation of the Open Internet principles that the Commission has articulated.

Mr. Schaeffer also underscored the need for additional clarity in the ultimate order concerning interconnection issues. He emphasized that this is important both to avoid the inadvertent creation of loopholes that ISPs or others could use to circumvent Open Internet rules and to minimize the burden on the Commission in future enforcement proceedings.

In addition, Cogent articulated three principles that should guide the Commission's treatment of interconnection. First, the Commission should be explicit that the core of the Open Internet rules—no blocking, no throttling and no paid prioritization—should apply with equal force to interconnection practices as they do to practices within an ISP's own network. Such practices, which are antithetical to an Open Internet, harm consumers regardless of whether they occur within the last mile or at the entryway to the last mile.

Second, in the event that an interconnection dispute arises under the new rules, the Commission should require that, during the pendency of such dispute, interconnection points be maintained and operated without congestion. The reason for this is that if interconnection points

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are congested during an enforcement proceeding—which could be a substantial period of time—then consumers will not be able to fully utilize the service which they bought from their ISP, *i.e.*, unimpeded access to all lawful Internet content at a particular level of speed and quality of service. Moreover, congested interconnection points are a far blunter instrument than blocking or degrading particular edge providers, because any content that passes through an interconnection point can be adversely affected.

Third, the Commission should provide guidance as to the type of costs that could be deemed reasonable in the context of interconnection disputes. In particular, Cogent emphasized that to the extent a network is entitled to be compensated for interconnection at all, such compensation should include only those costs that are actually and demonstrably ascribed to provisioning the interconnection, as distinct from more attenuated costs (*e.g.*, overhead or the costs associated with maintaining or upgrading a network to deliver the services already sold to that network's customers). It is important to recognize that this is not akin to mandating a bill-and-keep system (even though doing so would be sound policy and consistent with historical practice among networks). Nor is this a call for prospective, or even retrospective, rate regulation. Rather, the point is that if interconnection practices are to be evaluated under a reasonableness standard, then all interested parties and the Commission would benefit from an articulation of how that standard will operate in practice.

In addition to the foregoing principles, we also explained that it would be beneficial to address procedural issues associated with putative enforcement proceedings in the forthcoming Order. Specifically, we emphasized that the Commission should make clear that any interconnecting party or other interested person has standing to initiate a Section 208 complaint relating to interconnection. The reason for doing so is to avoid unnecessary disputes over standing, something which would only prolong any enforcement proceeding. Similarly, we encouraged the Commission to ensure that any procedural rules applied to such proceedings contain safeguards to promote the prompt and efficient resolution of disputes.

Finally, Mr. Schaeffer indicated that Cogent takes no issue with having its interconnection practices subject to the same standards as mass market broadband Internet access providers (*e.g.*, Time Warner Cable). *See, e.g.*, Comments of Cogent Communications Grp., Inc., GN Docket No. 14-28 (filed Jul. 15, 2014) at 15-16 and n.43. At the same time, Messrs. Schaeffer and Beury observed that the transit market in which Cogent operates is robustly competitive. Accordingly, the types of concerns that underlie the forthcoming Order are less likely to materialize in that market because if Cogent is not providing a service that meets a customer's needs then that customer can and will easily switch to another provider. As an example, we discussed the concerns of entities such as small cable companies that buy transit, and explained that Cogent and other transit providers actively compete for that business on the basis of price and quality. Those types of customers can, and do, switch transit providers to get the best deal. In contrast, as has been well-documented, that switching option—and the

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competitive discipline it imposes—is often unavailable to residential broadband Internet consumers.

Please direct any questions regarding this matter to my attention.

Sincerely



Robert M. Cooper

cc: Daniel K. Alvarez
Matthew S. DelNero
Gigi B. Sohn
Stephanie Weiner