



Future of Music Coalition

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February 13, 2015

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20054

Via Electronic Filing

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

Dear Ms. Dortch,

On February 12, 2015, I met with Commissioner Clyburn staff member Rebekah Goodheart, Legal Advisor, Wireline, regarding our concerns about zero-rating as pertains to the forthcoming net neutrality Order.

In our conversation, I described how creators, developers and the public would benefit from the clear application of bright-line net neutrality rules to at least two classes of zero-rating, with a third perhaps left to case-by-case review under the general conduct rule.

The communities for which Future of Music Coalition advocates would ultimately prefer an outright prohibition of all forms of zero-rating, as such practices distort the marketplace for creative speech and innovation. However, we understand that there may be impracticalities in applying a bright line rule to situations that, while presenting real harms, do not involve edge provider payments or the excepting of a carriers' own products, applications and services from user-imposed data caps.

Specifically, I suggested that bright line net neutrality rules apply to:

1. The zero-rating of applications within a class of similar applications with no edge provider payments.

This could be a situation where mobile or wireline ISPs zero-rate their own products, applications or services, but apply data cap restrictions to competitors' products,

applications or services. The rule would also apply to an ISP's choice to zero-rate only the top categories of product, application or service (examples: popular social networks, text messaging or videoconference apps), while imposing limitations on other offerings within the same category of service. This would stymie innovation, reduce consumer choice and shoehorn creators and fans into participation on platforms that may not be tailored to individual business models or user preferences.

2. All zero-rating in exchange for edge-provider payments.

Such arrangements are fundamentally no different than the preferential treatment that the Order would seek to prohibit in other areas, such as edge provider payment for the faster delivery of content, sites or services. Accepting payment for zero-rating is *de facto* discrimination against content providers that aren't in a position to pay to be included in ISP schemes to exclude certain sites, services or applications from data caps. The harms are the same regardless as to whether such arrangements are offered on equivalent terms to all interested parties, select applications within a class or, a few parties within a specific class of application. Paid arrangements to zero-rate are counter to the spirit and intent of the Order and disadvantage those whom it is designed to protect.

I also described the potential harms of:

3. Zero-rating all applications within a class even if this does not involve edge provider payments or the exclusion of an ISP's own products, sites and services from consumer data caps.

The music community's experience with T-Mobile's so-called "Music Freedom" program provides a good case study for the above scenario, although the issue extends beyond a carrier seeking to differentiate itself in the marketplace by zero-rating applications thought to be attractive to subscribers.

While we appreciate that certain applications can indeed be considered "lifeline" services, we hesitate to apply this distinction too broadly. Some sites that appear to be useful to a broad class of users may not be inherently neutral. For example, Facebook is now systematically deprioritizing content that isn't part of the service's "boost post" protocol. It is estimated that a mere 1-2 percent of "organic" posts intended for delivery to fans of a Facebook page—whether that page is operated by a creator, nonprofit or small business—are seen by those who have requested such updates. That is, unless said operator pays to have a post algorithmically "boosted." Therefore, the zero-rating of an application like Facebook as a potential "lifeline" does nothing to address the fact that speakers of less financial means are already deprioritized.

To allow for some flexibility in determining whether a service is appropriate to zero rate within a "lifeline" context, I suggested that such proposals be scrutinized under the general conduct rule.

I recognize that the above may not represent the full scope of perspectives of those with an interest in prohibiting the application of zero-rating. Nevertheless, the views of Future of Music Coalition were offered in the interest of highlighting the many ways in which zero-rating may act as a potential harm to speech, competition and innovation.

Respectfully submitted,

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cc: Rebekah Goodheart