



Joseph C. Cavender
Vice President & Assistant General Counsel
Federal Affairs
1220 L Street NW Suite #660
Washington, DC 20005
Tel: (571) 730-6533
joseph.cavender@level3.com

February 17, 2015

Ex Parte

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

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

Dear Ms. Dortch:

On February 12, 2015, I, on behalf of Level 3 Communications, LLC (“Level 3”), met with Amy Bender, Legal Advisor to Commissioner O’Rielly, regarding the above-captioned matter. The discussion was consistent with Level 3’s previous advocacy in this proceeding.¹ In particular, I noted that Level 3 has consistently urged the Commission to adopt strong open Internet rules and to remove any doubt about whether those protections apply to consumer broadband Internet access service providers’ conduct and practices with respect to the exchange of Internet traffic between their end-user customers and other networks. Millions of Americans have called on the Commission to protect the open Internet and the virtuous circle of innovation and investment that openness has enabled. The Commission should not them down.

According to the Fact Sheet, the Chairman’s proposal would ensure that “the Commission would have authority to hear complaints and take appropriate enforcement action if necessary, if it determines the interconnection activities of ISPs are not just and reasonable.”² A broad array of consumer groups and industry commenters have urged the Commission to provide

¹ See Letter from Joseph C. Cavender, Level 3, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-28 (filed Oct. 27, 2014); Comments of Level 3, GN Docket No. 14-28 (filed July 15, 2014); Reply Comments of Level 3, GN Docket No. 14-28 (filed Sept. 15, 2014); Comments of Level 3, GN Docket No. 14-28, et al. (filed Mar. 21, 2014); Letter from Joseph C. Cavender, Level 3, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-28, (filed Sept. 8, 2014).

² See Fact Sheet: Chairman Wheeler Proposes New Rules for Protecting the Open Internet, at 2, available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0204/DOC-331869A1.pdf.

Marlene H. Dortch

February 17, 2015

Page 2

additional clarity regarding that standard.³ The Commission's NPRM suggests a promising avenue for doing so. In the NPRM, the Commission, responding to arguments made by Level 3 and others that open Internet rules must apply to broadband providers' Internet traffic exchange practices, asked: "how can we ensure that a broadband provider would not be able to evade our open Internet rules by engaging in traffic exchange practices that would be outside the scope of the rules as proposed?"⁴ That framework should be a guide in determining whether a broadband provider's practice or action is unjust or unreasonable. That is, at a minimum, any practice or action that has the purpose or effect of circumventing, undermining or tending to undermine or circumvent the goals of the Commission's open Internet rules should be considered to be unreasonable.⁵ The just and reasonable standard may, in the particular circumstances of any case, require more, but it doubtless requires no less. Level 3 urges the Commission to declare so in its upcoming order.

Please do not hesitate to contact me if you should have any questions.

Sincerely,

/s/ Joseph C. Cavender

Joseph C. Cavender

cc: Amy Bender

³ See Letter from Angie Kronenberg, COMPTTEL, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-28, at 1 (filed Feb. 12, 2015).

⁴ *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Notice of Proposed Rulemaking, FCC 14-61, 29 FCC Rcd 5561, ¶ 59 (2014) (NPRM).

⁵ For example, the 2010 *Open Internet Order* prohibited broadband providers from imposing access fees, charges imposed on a provider "simply for delivering traffic to or carrying traffic from the broadband provider's end-user customers." *Preserving the Open Internet*, GN Docket No. 09-191, et al., Report and Order, FCC 10-201, 25 FCC Rcd 17905, ¶ 67 (2010) (*Open Internet Order*). Assuming any order the Commission were to adopt in this proceeding would similarly prohibit access fees, the standard Level 3 proposes here would ensure that a broadband provider could not evade the prohibition on access fees by imposing fees under any name that would have the effect of undermining that prohibition.