

February 18, 2015

Via Electronic Submission

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

Re: Protecting and Promoting the Open Internet; Framework for Broadband Internet Services; GN Docket No. 14-28; GN Docket No. 10-127

Dear Ms. Dortch:

Union Square Ventures takes this opportunity to re-emphasize the need for the Commission to apply bright line bans against the most egregious forms of “zero rating.” We agree with Verizon that the 2010 Order banned such practices; the Commission should not step back from the 2010 Order. Seven nations have concluded that zero rating is a violation of net neutrality; if we have the “strongest possible net neutrality rules” they should not be the eighth best. As has been frequently noted in the record, the importance of the open Internet has only grown since the Commission’s previous attempt to protect it.

Verizon recently told the Commission that a primary component of its reasoning for challenging the Commission’s 2010 Open Internet Order was because the 2010 Order banned “zero rating” for a fee aka “sponsored data”.¹ Similarly, press reports indicate that companies offering “sponsored data” programs are watching the FCC closely and will take Commission inaction as a green light.² Thus, ISPs are poised to increase these practices dramatically. The Commission should ensure its upcoming Open Internet Order takes appropriate action to put a stop to the discrimination (and potentially fees) inherent in zero rating.

Communication regulators around the world are recognizing the dangers of these arrangements and are banning such practices. Regulators in Chile, the Netherlands, Slovenia and Canada explicitly prohibited zero-rating, while regulators in Germany, Austria and Norway publicly stated that zero-rating violates network neutrality.³ These regulators recognize that allowing tactics that lead to artificial scarcity will not lead to the bandwidth abundance central to continuing the virtuous cycle of innovation.

¹ Letter from William H. Johnson, Vice President & Associate General Counsel, Verizon to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 14-28, <http://apps.fcc.gov/ecfs/document/view?id=60001028587>.

² Mark Bergen, “Net Neutrality Policy Likely to Permit Sponsored Data Programs,” AdAge, Feb. 12, 2015, <http://adage.com/article/digital/net-neutrality-policy-permit-sponsored-data/297071/>.

³ In the Netherlands, less than a week after being prevented from zero rating their own video service, Vodaphone, the largest mobile operator, doubled smartphone usage caps for free. Rewheel, Feb. 6, 2015, http://dfmonitor.eu/downloads/Banning_zerorating_leads_to_higher_volume_caps_06022015.pdf. See David Meyer, “Canada cracks down on zero-rating in two net neutrality rulings,” GigaOm, Jan. 29, 2015, <https://gigaom.com/2015/01/29/canada-cracks-down-on-zero-rating-in-two-net-neutrality-rulings/>; Antonios Drossos, “Guest Blog: the real threat to the open Internet is zero-rated content,” World Wide Web Foundation, Feb. 17, 2015, <http://webfoundation.org/2015/02/guest-blog-the-real-threat-to-the-open-internet-is-zero-rated-content/>.

There are at least three categories of zero rating-- (1) charging applications a fee for zero rating, (2) not charging a fee but zero rating only a subset of applications in a class of applications or a subset of competitors, and finally (3) zero rating an entire class of applications without a fee. The first two should be banned *ex ante* with bright line rules, and the third can be left for case for case analysis. The first one produces all the harms of paid prioritization--benefiting existing giants, raising the costs of innovation, and encouraging carriers to choose scarcity (reducing their caps). Evidence abroad confirms these harms, as countries that permit zero rating for a fee have seen declining bandwidth caps.⁴ Selectively exempting some applications from a cap--even without a fee--would have a distortive impact, leaving some competitors at a major competitive disadvantage.

While Verizon's recent statement to the Commission prompts this filing, Union Square Ventures and others in the startup community have repeatedly filed in this record arguing that the Commission should take decisive action on zero rating, as we know zero rating is harmful to startups, distorts the competitive marketplace, and raises the costs of innovation.

Union Square Ventures:

"Mr. Wilson and Mr. Burnham [of USV] both spoke in *opposition to "zero rating" by carriers*, that is, allowing some applications to be exempt from data caps while subjecting similar applications to those same data caps (e.g., T-Mobile's treatment of some streaming music services). Mr. Burnham asked what would happen if electric companies zero-rated some refrigerators and not others. It would, in his words, "skew the market."⁵

Engine Advocacy:

"They should also not engage in non-technical discriminations, *such as excluding some applications from bandwidth caps while subjecting others to them.*"⁶

Tumblr:

"Similarly, if broadband providers are permitted to require payments from app developers *in exchange for exemptions from mobile data caps*, those same broadband providers will be able to place tremendous pressure on app developers to pay or be punished. Startups that rely on mobile apps (most startups these days) will be forced to negotiate data cap exemptions before launch, because mobile app users will be incentivized only to use apps that are exempted from their data plans. This effectively results in discrimination against apps that cannot afford to pay for the exemption"⁷

⁴ "The most alarming finding by far was sharp hikes in the price of mobile internet usage (€Gigabyte) by operators that have launched during 2014 own zero-rated data-hungry video services such as on-demand film stores and mobile TV. Similarly a European operator that has launched zero-rated unlimited YouTube access over 4G has at the same time tripled the price of open mobile internet usage (€Gigabyte)." Digital Fuel Monitor, November 2014, http://dfmonitor.eu/insights/2014_nov_premium_q4_update/.

⁵ Notice of *Ex Parte* Meeting of Gigi Sohn, Protecting and Promoting the Open Internet, GN Docket No. 14-28, June 27, 2014, available at <http://apps.fcc.gov/ecfs/document/view?id=7521350851>, page 1.

⁶ Comments of Engine Advocacy, Protecting and Promoting the Open Internet, GN Docket No. 14-28, April 24, 2014, available at <http://apps.fcc.gov/ecfs/document/view?id=7521099354>, page 23.

⁷ Comments of Tumblr, Protecting and Promoting the Open Internet, GN Docket No. 14-28, September 9, 2014, available at <http://apps.fcc.gov/ecfs/document/view?id=7521847801>, pages 10.

CodeCombat:

“We will note, however, that education companies have specific concerns. For example, Udacity recently struck an innovative deal with AT&T concerning both ‘nanodegrees’ and internships. We think this deal is a positive development for expanding access to jobs skills and potentially to some jobs. We believe, however, that such a deal would be extremely detrimental to innovation and access in the education sector if, as part of the deal, AT&T had the FCC-granted legal right to offer Udacity special access to its networks—*terms such as a discriminatory exemption from bandwidth caps* or priority for its bandwidth use in times of congestion. The FCC’s proposal would empower AT&T to do just that—on discriminatory terms and on exclusive terms.”⁸

MobileWorks:

We urge the FCC take this opportunity to reclassify ISPs as telecommunications service providers under the Title II of the Communications Act, with appropriate forbearance, and to adopt bright-line rules against unreasonable technical discrimination, paid prioritization and *discriminatory exemptions from bandwidth caps*, blocking, and access fees.⁹

Cloudflare and Mozilla:

“Mr. Prince and Ms. Dixon Thayer expressed *concern about ‘zero-rating,’* that is, carriers exempting certain services from their data caps while not exempting other similar services.”¹⁰

Kickstarter:

“One of our board members, Fred Wilson, described how venture capital pitches would go, in this nightmare scenario: ‘Telcos will pick their preferred partners, *subsidize the data costs for those apps*, and make it much harder for new entrants to compete with the incumbents.’¹¹

Reddit:

We urge the FCC to classify broadband providers under Title II of the Communications Act and to enact bright-line rules which:...*Ban discriminatory exemptions to bandwidth caps.*¹²

Etsy:

We recommend that the FCC mandate transparency and ban blocking, unreasonable discrimination, paid prioritization, and *discriminatory exemptions to bandwidth caps.*¹³

⁸ Comments of CodeCombat, Protecting and Promoting an Open Internet, GN Docket No. 14-28, June 23, 2014, available at <http://apps.fcc.gov/ecfs/document/view?id=7521678743>, page 8.

⁹ Comments of MobileWorks, Protecting and Promoting an Open Internet, GN 14-28, August 5, 2014, available at <http://apps.fcc.gov/ecfs/document/view?id=7521750457>, page 6.

¹⁰ Comments of CloudFlare and Mozilla, Protecting and Promoting an Open Internet, GN Docket No. 14-28, June 27, 2014, available at <http://apps.fcc.gov/ecfs/document/view?id=7521350851>.

¹¹ Comments of Kickstarter, Protecting and Promoting an Open Internet, GN Docket No. 14-28, July 10, 2014, <http://apps.fcc.gov/ecfs/document/view?id=7521374594>, page 3.

¹² Comments of reddit, Inc., Protecting and Promoting the Open Internet, GN Docket No. 14-28, July 15, 2014, available at <http://apps.fcc.gov/ecfs/document/view?id=7521679127>, pages 10-11.

¹³ Comments of Etsy, Inc., Protecting and Promoting the Open Internet, GN Docket No. 14-28, July 8, 2014, available at <http://apps.fcc.gov/ecfs/document/view?id=7521372050>, page 9.

Shapeways:

We have already expressed strong support for network neutrality and opposition to paid prioritization, *discriminatory exemptions from bandwidth caps*, and application-specific technical discrimination.¹⁴

Contextly:

Startups need the certainty that can be offered by a rule against unreasonable discrimination and access fees--against application-specific discrimination in terms of bitrate, latency, or jitter, *against discriminatory exemptions to bandwidth caps*, and an effective ban against paid priority or other preferences, all of which should apply to fixed and mobile, to deep packet inspection routers and last-mile interconnection.¹⁵

This letter is being filed electronically for inclusion in the public record of the above referenced proceedings. If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

Nick Grossman
Union Square Ventures

¹⁴ Comments of ShapeWays, Protecting and Promoting the Open Internet, GN Docket No. 14-28, Aug. 5, 2014, available at <http://apps.fcc.gov/ecfs/document/view?id=7521750466>, page 8.

¹⁵ Comments of Contextly, Protecting and Promoting the Open Internet, GN Docket No. 14-28, and Framework for Broadband Internet Service, GN Docket 10-127, June 3, 2014, available at <http://apps.fcc.gov/ecfs/document/view?id=7521195149>, page 8.